

**Exhibit 1**

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
CA NO. 1:20-cv-10002

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EMILY FORSYTHE,  
Plaintiff,  
vs.  
WAYFAIR, LLC,  
Defendant.

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VIDEOTAPED REMOTE DEPOSITION of EMILY FORSYTHE  
Monday, July 13, 2020 - 9:30 a.m.  
Veritext Remote Office

Kimberley J. Bouzan, CSR  
Veritext

<p style="text-align: right;">Page 22</p> <p>1 Q. And did you get your degree in business</p> <p>2 from Cornell?</p> <p>3 A. I did.</p> <p>4 Q. What year?</p> <p>5 A. What year did I graduate?</p> <p>6 Q. Yes. What year did you get your master's</p> <p>7 in business from Cornell?</p> <p>8 A. I graduated in 2014.</p> <p>9 Q. And what year did you graduate from</p> <p>10 college at Cornell?</p> <p>11 A. 2009.</p> <p>12 Q. And have you ever been in the military,</p> <p>13 ma'am?</p> <p>14 A. No.</p> <p>15 Q. All right. Have you ever been arrested</p> <p>16 for a felony?</p> <p>17 A. No.</p> <p>18 Q. And your case, your insurance coverage</p> <p>19 case in which you had a deposition, did that ever</p> <p>20 go to trial?</p> <p>21 A. No.</p> <p>22 Q. Did it reach -- did you reach a</p> <p>23 settlement with the insurance company?</p> <p>24 A. I think so. I don't know if it was</p>	<p style="text-align: right;">Page 24</p> <p>1 rates. In addition to that, I also had special</p> <p>2 projects I worked on, such as productivity</p> <p>3 projects and efficiency projects and how to</p> <p>4 optimize inventory flow and system flow.</p> <p>5 And then when I was an operations</p> <p>6 manager, it was part of, like, a development</p> <p>7 program. I ran a portion of the shift and I ran</p> <p>8 the productivity metrics and really -- like</p> <p>9 running product through the building. And then I</p> <p>10 also had special projects, such as cost</p> <p>11 reduction, lien type of projects, and operational</p> <p>12 efficiency projects.</p> <p>13 Q. And as a pathways operations manager did</p> <p>14 you have people reporting to you?</p> <p>15 A. I did.</p> <p>16 Q. How many direct reports did you have?</p> <p>17 A. It depended on which part of my job I was</p> <p>18 in.</p> <p>19 Q. So why don't you tell me. For each part</p> <p>20 of your job, how many direct reports did you</p> <p>21 have, Ms. Forsythe?</p> <p>22 A. When I was an area manager, I had</p> <p>23 anywhere between 20 to 60 depending on the</p> <p>24 season. And then when I was an operations</p>
<p style="text-align: right;">Page 23</p> <p>1 called a settlement.</p> <p>2 Q. Did you get money from the insurance</p> <p>3 company as a result of your car accident?</p> <p>4 A. They reimbursed me for money I had paid.</p> <p>5 Q. What was your first job after you left</p> <p>6 Cornell with a master's in business in 2014?</p> <p>7 A. I went to Amazon.</p> <p>8 Q. And where were you located when you</p> <p>9 worked for Amazon?</p> <p>10 A. In Louisville, Kentucky.</p> <p>11 Q. And what was your title there?</p> <p>12 A. I was a pathways operations manager.</p> <p>13 Q. And what were your duties and</p> <p>14 responsibilities as a pathways operations</p> <p>15 manager?</p> <p>16 A. I had a lot of responsibilities.</p> <p>17 Q. Great. We've got a lot of time. What</p> <p>18 were your duties and responsibilities as a</p> <p>19 pathways operations manager in Louisville for</p> <p>20 Amazon?</p> <p>21 A. So I started by running a shift, so an</p> <p>22 area manager. And then the roles and</p> <p>23 responsibilities and duties were to run the shift</p> <p>24 and help your team perform and hit productivity</p>	<p style="text-align: right;">Page 25</p> <p>1 manager, I had anywhere from four to eight direct</p> <p>2 reports depending on the season.</p> <p>3 Q. Okay. And as an area manager, what were</p> <p>4 the titles of the people that reported to you at</p> <p>5 Amazon?</p> <p>6 A. I don't remember.</p> <p>7 Q. Okay. What were their job duties and</p> <p>8 responsibilities? The people that reported to</p> <p>9 you at Amazon when you were an area manager, what</p> <p>10 were they doing on a day-to-day basis?</p> <p>11 A. Packing product.</p> <p>12 Q. And that's why it increased seasonally</p> <p>13 because there were certain seasons where you</p> <p>14 needed more people packing product; right?</p> <p>15 A. That's correct.</p> <p>16 Q. As an operations manager, you said you</p> <p>17 had four to eight direct reports. What were</p> <p>18 their titles?</p> <p>19 A. Area managers.</p> <p>20 Q. Okay. And each area manager similarly</p> <p>21 had 20 to 60 direct reports below them. Correct?</p> <p>22 A. Sometimes they had more.</p> <p>23 Q. And how long were you at Amazon as an</p> <p>24 area manager before you received a promotion to</p>

<p style="text-align: right;">Page 26</p> <p>1 operations manager?</p> <p>2 A. I can't remember. It was less than a</p> <p>3 year.</p> <p>4 Q. Okay. And how long were you at Amazon in</p> <p>5 the promoted role as operations manager?</p> <p>6 A. It was less than a year.</p> <p>7 Q. And during the period that you worked at</p> <p>8 Amazon, did you meet Michael McDole?</p> <p>9 A. Yes, I did.</p> <p>10 Q. And when did you meet Mr. McDole while</p> <p>11 you worked at Amazon?</p> <p>12 A. What month or day?</p> <p>13 Q. As best you can remember.</p> <p>14 A. I met him sometime in 2005 around --</p> <p>15 Q. I'm going to stop you there. You weren't</p> <p>16 at Amazon until 2015 and you just said 2005. Did</p> <p>17 I -- did you misspeak?</p> <p>18 A. I never said I wasn't at Amazon until</p> <p>19 2015. 2014.</p> <p>20 Q. Okay. Well, how could you have met</p> <p>21 Mr. McDole at Amazon in 2005 if you didn't get to</p> <p>22 Amazon until 2014?</p> <p>23 A. I didn't meet him in 2005.</p> <p>24 Q. All right. Well, that's what you just</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. And was he also physically located in</p> <p>2 Louisville, Kentucky, or was Mr. McDole located</p> <p>3 somewhere else when you first met?</p> <p>4 A. He was located somewhere else.</p> <p>5 Q. Okay. And did he report to you or did</p> <p>6 you report to him? That is Mr. McDole while you</p> <p>7 were both at Amazon.</p> <p>8 A. No.</p> <p>9 Q. He never reported to you and you never</p> <p>10 reported to him at Amazon?</p> <p>11 A. No.</p> <p>12 Q. Okay. So how would you two have occasion</p> <p>13 to interact at Amazon when you did interact? You</p> <p>14 and Mr. McDole.</p> <p>15 A. Are you asking how we met?</p> <p>16 Q. Yes. When you would see him, it was not</p> <p>17 in the context of him reporting to you or you</p> <p>18 reporting to him, so how would you have occasion</p> <p>19 to interact, if you did at all, while you were at</p> <p>20 Amazon?</p> <p>21 A. So we met and interacted two or three</p> <p>22 times at Amazon. The first time that I met him,</p> <p>23 I was doing a site visit of the building he was</p> <p>24 working in as I was working on a project related</p>
<p style="text-align: right;">Page 27</p> <p>1 said, so let's start again.</p> <p>2 When did you first meet Mr. McDole?</p> <p>3 A. Sometime in 2015.</p> <p>4 Q. Perfect. Okay. Go ahead.</p> <p>5 Do you happen to remember what time of</p> <p>6 year it was?</p> <p>7 A. No.</p> <p>8 Q. Do you remember the season? Was it fall?</p> <p>9 Winter? Summer? Spring?</p> <p>10 A. No. Fall.</p> <p>11 Q. What job were you doing when you first</p> <p>12 met Mr. McDole? Were you an area manager?</p> <p>13 A. No.</p> <p>14 Q. So you had already received the promotion</p> <p>15 to area manager when you met Mr. McDole?</p> <p>16 A. That's correct.</p> <p>17 Q. And what job was he doing?</p> <p>18 A. He was also a pathways operations</p> <p>19 manager.</p> <p>20 Q. And you were still located in Louisville,</p> <p>21 Kentucky; is that correct? At that point.</p> <p>22 A. When we met?</p> <p>23 Q. Yes.</p> <p>24 A. Yes. That's correct.</p>	<p style="text-align: right;">Page 29</p> <p>1 to a function that was in his building.</p> <p>2 The second time we met, he came down to</p> <p>3 tour the building I was in because he wanted to</p> <p>4 learn an operational process that was happening</p> <p>5 in my building.</p> <p>6 Q. Okay. And the third time?</p> <p>7 A. I can't remember a third time.</p> <p>8 Q. Okay. So it's just probably two times</p> <p>9 that you interacted at Amazon?</p> <p>10 A. I believe so.</p> <p>11 Q. Okay. Did you ever go out socially with</p> <p>12 Mr. McDole while you were both at Amazon?</p> <p>13 A. I believe after he toured the building in</p> <p>14 Louisville we got lunch.</p> <p>15 Q. Okay. So that was the second time you</p> <p>16 interacted while you were at Amazon. That was</p> <p>17 when he came to Louisville and you got lunch; is</p> <p>18 that right?</p> <p>19 A. It was a work-related lunch.</p> <p>20 Q. Yeah. Okay.</p> <p>21 Was there anybody else at lunch with you</p> <p>22 and Mr. McDole in Louisville that time?</p> <p>23 A. I can't remember.</p> <p>24 Q. And the first time was when you made a</p>

<p style="text-align: right;">Page 30</p> <p>1 site visit to his building -- is that correct --</p> <p>2 in, like, the fall of 2015?</p> <p>3 A. The first time I met him?</p> <p>4 Q. Yes.</p> <p>5 A. Yes, that's correct.</p> <p>6 Q. And did you interact socially with him</p> <p>7 outside of work during that visit?</p> <p>8 A. No.</p> <p>9 Q. Okay. Did you ever have phone calls with</p> <p>10 Mr. McDole, other than those two occasions when</p> <p>11 you went to visit his site in the fall of 2015</p> <p>12 and then when he went to visit your site in</p> <p>13 Louisville and you had lunch? Did you ever have</p> <p>14 phone calls with him while you two were at</p> <p>15 Amazon?</p> <p>16 A. During which time?</p> <p>17 Q. Any time. Any time that you and</p> <p>18 Mr. McDole were working at Amazon, did you guys</p> <p>19 have phone calls other than those two visits we</p> <p>20 just talked about?</p> <p>21 A. I can't remember.</p> <p>22 Q. How about text messages? Did you and</p> <p>23 Mr. McDole exchange text messages while the two</p> <p>24 of you were at Amazon?</p>	<p style="text-align: right;">Page 32</p> <p>1 A. I can't remember.</p> <p>2 Q. So you may have. You just don't</p> <p>3 remember?</p> <p>4 A. I may have. I don't remember.</p> <p>5 Q. Okay. Did you have his personal e-mail</p> <p>6 address during the period of time that you and</p> <p>7 Mr. McDole both worked at Amazon?</p> <p>8 A. I have no idea. I don't remember that.</p> <p>9 Q. Do you know if he had your personal</p> <p>10 e-mail address during the time you and Mr. McDole</p> <p>11 worked at Amazon?</p> <p>12 A. I don't know. I don't remember.</p> <p>13 Q. Did you have -- was it your practice to</p> <p>14 give out your cell phone number for texting to</p> <p>15 folks that you worked with at Amazon?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So have we covered all of the</p> <p>18 interactions you had with Mr. McDole while the</p> <p>19 two of you both worked at Amazon?</p> <p>20 A. I'm not sure.</p> <p>21 Q. Okay. Well, I think I've asked you if</p> <p>22 you texted him, if you e-mailed him, if you</p> <p>23 called him about anything other than the two</p> <p>24 visits you've identified for me. Were there any</p>
<p style="text-align: right;">Page 31</p> <p>1 A. I believe we did.</p> <p>2 Q. Okay. And was it all about the -- either</p> <p>3 his site visit to your facility or your site</p> <p>4 visit to his facility?</p> <p>5 A. I believe it was.</p> <p>6 Q. Okay. So you didn't exchange any text</p> <p>7 messages with Mr. McDole while you two were at</p> <p>8 Amazon that wasn't about those two site visits</p> <p>9 we've talked about?</p> <p>10 A. I can't remember.</p> <p>11 Q. Okay. So when you went out in</p> <p>12 Louisville, it was for lunch. You never went out</p> <p>13 in the evening; is that correct?</p> <p>14 A. I can't remember.</p> <p>15 Q. So you know you went out for lunch, but</p> <p>16 you might have also gone out in the evening in</p> <p>17 Louisville with Mr. McDole?</p> <p>18 A. I can't remember what we did.</p> <p>19 Q. Okay. How about e-mails? Did the two of</p> <p>20 you exchange e-mails about anything -- during</p> <p>21 this period you were at Amazon, did you exchange</p> <p>22 e-mails about anything other than his visit to</p> <p>23 Louisville for work-related reasons and your</p> <p>24 visit to his facility for work-related reasons?</p>	<p style="text-align: right;">Page 33</p> <p>1 other interactions you had with Mr. McDole that</p> <p>2 you haven't told us about in this deposition</p> <p>3 while the two of you worked at Amazon?</p> <p>4 A. Not that I recall.</p> <p>5 Q. Okay. And certainly while the two of you</p> <p>6 worked at Amazon, Mr. McDole never sexually</p> <p>7 harassed you. Is that fair to say?</p> <p>8 A. That's -- can you say that question</p> <p>9 again?</p> <p>10 Q. Sure. While the two of you worked at</p> <p>11 Amazon, do you believe that Mr. McDole engaged in</p> <p>12 sexual harassment of you?</p> <p>13 A. No.</p> <p>14 Q. And you never complained to anybody at</p> <p>15 Amazon about Mr. McDole at all; is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. At some point you reached out to</p> <p>18 Mr. McDole and asked him to stay at your parents'</p> <p>19 house in Cohasset; is that correct?</p> <p>20 A. No. That's not correct.</p> <p>21 Q. Okay. Tell me -- is it fair to say that</p> <p>22 Mr. McDole came and stayed at your parents' house</p> <p>23 in Cohasset? Is that correct?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. So why don't you tell me how it came to 2 be -- first of all, when did that occur? When 3 did Mr. McDole come to stay at your parents' 4 house in Cohasset? 5 A. December 2015. 6 Q. Okay. Were you still working at Amazon 7 in December 2015? 8 A. No, I was not. 9 Q. Where were you working then? 10 A. I was in between jobs. 11 Q. Okay. And was he still working at Amazon 12 in December 2015? 13 A. You'd have to ask him. 14 Q. Well, he came to your parents' house in 15 Cohasset. Did you know where he was working at 16 the time? 17 A. I can't remember. 18 Q. Where did you reach out to him? When you 19 talked about him coming to Cohasset, how did you 20 two talk about that? 21 A. I don't remember. 22 Q. Okay. So you're not working in December 23 2015, and Mr. McDole comes to stay at your 24 parents' house in Cohasset. Presumably you</p>	<p style="text-align: right;">Page 36</p> <p>1 want you to come visit me at my parents' house in 2 Cohasset"? 3 A. I did not say that. 4 Q. Why? If you didn't want him there, why 5 didn't you tell him that you didn't want him to 6 come to your parents' house in Cohasset? 7 A. I never said I didn't want him there. I 8 just didn't invite him. 9 Q. I see. And, I'm sorry, did you say he 10 did that over -- he invited himself over the 11 phone, over text, or by e-mail? 12 A. I can't remember. 13 Q. And had you been texting him prior to 14 that Cohasset visit? 15 A. I can't recall. 16 Q. Okay. So how did it come to be, 17 Ms. Forsythe, that Mr. McDole showed up on your 18 parents' doorstep in Cohasset in December of 19 2015? Give me the background. 20 A. He had reached out to me and said he has 21 to take vacation. He's never been to Boston. 22 And I said, "You're welcome to come and stay at 23 my parents' house for a few days." 24 Q. So let me stop you there. I thought you</p>
<p style="text-align: right;">Page 35</p> <p>1 invited him there. He didn't show up uninvited. 2 Is that fair? 3 A. No. That's not fair. 4 Q. So he showed up at your parents' house in 5 Cohasset uninvited. Is that what you're telling 6 me? 7 A. That's not accurate. 8 Q. Okay. So it's one or the other. You 9 either invited him or you didn't invite him. 10 Which is correct? 11 A. I can't answer that question. There's a 12 third option. 13 Q. What's the third option? You tell me. 14 A. He invited himself. 15 Q. Okay. So he invited himself to your 16 parents' house in Cohasset. And how did he know 17 how to -- where to come? The address and all 18 that. 19 A. I gave him the address. 20 Q. Okay. So he invited himself to your 21 parents' house in Cohasset. Was that over the 22 phone? In an e-mail? In a text? 23 A. I can't remember. 24 Q. Okay. Did you tell him, "No. I don't</p>	<p style="text-align: right;">Page 37</p> <p>1 told me he invited himself to your parents' 2 house. You just said you told him you're welcome 3 to stay at my parents' house for a few days. Is 4 that not an invitation? What am I missing? 5 A. I don't think that's an invitation. 6 Q. Okay. Fine. It's a matter of definition 7 then. Okay. 8 So you say you're welcome to come stay at 9 my parents' house for a couple of days. And when 10 he reached out to you to say he was coming to 11 Boston, had you spoken with him at all since you 12 left Amazon, either by text, phone, e-mail at 13 all? 14 A. I don't remember. 15 Q. When exactly did you leave Amazon? How 16 long before this December 2015 meeting in 17 Cohasset? 18 A. I left Amazon the second -- I believe it 19 was the second week of December. The first or 20 second week of December -- 21 Q. Okay. 22 A. -- of 2015. 23 Q. Okay. So it wasn't -- it was within a 24 month of you leaving Amazon that he came to your</p>

<p style="text-align: right;">Page 38</p> <p>1 parents' house in Cohasset; is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And how long did he actually stay</p> <p>4 at your parents' house in Cohasset?</p> <p>5 A. Two or three days, I believe.</p> <p>6 Q. Okay. And you were no longer working at</p> <p>7 Amazon, so this wasn't a work-related meeting.</p> <p>8 Is that fair to say?</p> <p>9 A. That's fair to say.</p> <p>10 Q. And how did Mr. McDole get to Cohasset?</p> <p>11 A. I don't remember.</p> <p>12 Q. Okay. Did you pick him up at the</p> <p>13 airport?</p> <p>14 A. I don't remember.</p> <p>15 Q. Did he meet your parents?</p> <p>16 A. He met my parents.</p> <p>17 Q. And what did the two of you do in</p> <p>18 Cohasset for two or three days in December of</p> <p>19 2015?</p> <p>20 A. Tourist activities.</p> <p>21 Q. Did you go out to dinner together?</p> <p>22 A. I believe so.</p> <p>23 Q. Did the two of you ever kiss or have any</p> <p>24 sort of romantic interlude during Mr. McDole's</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. And when Mr. McDole left, did you ever</p> <p>2 discuss, either in person or by written</p> <p>3 communication, the prospect of having a romantic</p> <p>4 relationship continue?</p> <p>5 A. Did he and I discuss that?</p> <p>6 Q. Yes. After he left your parents' house</p> <p>7 in Cohasset and you guys had kissed, did you talk</p> <p>8 any more about whether the two of you would have</p> <p>9 a romantic relationship?</p> <p>10 A. He had told me he wanted to see me again,</p> <p>11 and I told him I wasn't interested in seeing him</p> <p>12 again because I wasn't romantically interested in</p> <p>13 him.</p> <p>14 Q. Okay. And how many times did you have a</p> <p>15 conversation about his romantic interest in you</p> <p>16 and your disinterest? Was it once or more than</p> <p>17 once?</p> <p>18 A. I don't remember. It was at least one</p> <p>19 time.</p> <p>20 Q. And how soon after he left in December of</p> <p>21 2015 did you have that conversation where he</p> <p>22 indicated he was interested and you indicated</p> <p>23 that you weren't?</p> <p>24 A. A few weeks after.</p>
<p style="text-align: right;">Page 39</p> <p>1 visit to Cohasset?</p> <p>2 A. Yes, we did.</p> <p>3 Q. Did you do more than just kiss during</p> <p>4 Mr. McDole's visit to Cohasset?</p> <p>5 A. No, we did not.</p> <p>6 Q. And as you sit here today, was that</p> <p>7 welcome or unwelcome?</p> <p>8 A. That was welcome.</p> <p>9 Q. Okay. So other than kissing, you and</p> <p>10 Mr. McDole never had anything more romantic</p> <p>11 during his visit in Cohasset. Is that fair to</p> <p>12 say?</p> <p>13 A. That's fair to say.</p> <p>14 Q. And did you kiss more than once during</p> <p>15 his visit to Cohasset?</p> <p>16 A. Define "more than once."</p> <p>17 Q. Fair enough. On more than one occasion</p> <p>18 did the two of you find yourselves kissing?</p> <p>19 A. In a day?</p> <p>20 Q. Yes.</p> <p>21 A. Yes. We kissed twice.</p> <p>22 Q. Was it all in the same day or was it over</p> <p>23 a two- or three-day period that you kissed?</p> <p>24 A. It was all in the same day.</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. Okay. And did he ever approach you again</p> <p>2 indicating he was interested in you after that</p> <p>3 conversation but before you reached out to him</p> <p>4 about Wayfair?</p> <p>5 A. I don't remember.</p> <p>6 Q. So let's go back for a minute. After</p> <p>7 Amazon, what was your next job?</p> <p>8 A. When I left Amazon where did I go after</p> <p>9 that?</p> <p>10 Q. Yes. What was your next job after</p> <p>11 Amazon? After 2015, December, when you left</p> <p>12 Amazon.</p> <p>13 By the way -- sorry. Strike that.</p> <p>14 Why did you leave Amazon? Did you resign</p> <p>15 or were you fired?</p> <p>16 A. I resigned.</p> <p>17 Q. Why did you resign?</p> <p>18 A. I had another job offer.</p> <p>19 Q. Okay. And from whom did you have another</p> <p>20 job offer?</p> <p>21 A. I had two offers. I had one from</p> <p>22 Walmart.com and then I had one from Globe</p> <p>23 Composite Solutions.</p> <p>24 Q. Did you accept one of them?</p>

<p style="text-align: right;">Page 42</p> <p>1 A. I did.</p> <p>2 Q. And when did you start the next job?</p> <p>3 A. January 2016.</p> <p>4 Q. Okay. And with whom did you work in</p> <p>5 January 2016?</p> <p>6 A. The people or the company name?</p> <p>7 Q. The company name.</p> <p>8 A. Globe Composite Solutions.</p> <p>9 Q. And what was Globe Composite Solutions'</p> <p>10 business?</p> <p>11 A. Plastics manufacturing.</p> <p>12 Q. And what was your title with Globe</p> <p>13 Composite Solutions in January of 2016?</p> <p>14 A. I was a project manager.</p> <p>15 Q. And where were you physically located?</p> <p>16 A. What city or what town?</p> <p>17 Q. Either.</p> <p>18 A. I started in Rockland, Massachusetts, and</p> <p>19 then we moved to Stoughton, Massachusetts.</p> <p>20 Q. And during the period you were with Globe</p> <p>21 Composite Solutions, did you receive any</p> <p>22 promotions?</p> <p>23 A. No.</p> <p>24 Q. And when did you leave Globe Composite</p>	<p style="text-align: right;">Page 44</p> <p>1 A. From them or from another company?</p> <p>2 Q. When you resigned from Globe Composite,</p> <p>3 did you have an offer from another company?</p> <p>4 A. I did.</p> <p>5 Q. From whom?</p> <p>6 A. Wayfair.</p> <p>7 Q. And how did you learn of the opportunity</p> <p>8 at Wayfair in December of 2016?</p> <p>9 A. I learned about it before December 2016.</p> <p>10 Q. How did you learn about it?</p> <p>11 A. I was contacted by a recruiter on</p> <p>12 LinkedIn from Wayfair.</p> <p>13 Q. And what was the opportunity for which</p> <p>14 you applied and were offered the job?</p> <p>15 A. I didn't apply. They just interviewed me</p> <p>16 and then offered me a job.</p> <p>17 Q. What was the job?</p> <p>18 A. They had contacted me -- there was two</p> <p>19 jobs. I can't remember the titles. They had</p> <p>20 contacted me in the summer for one role. I got</p> <p>21 that offer; I turned it down. It wasn't a good</p> <p>22 fit, and I can't remember the name of that job.</p> <p>23 And then I reached out to them because my</p> <p>24 year was coming to an end and I loved the</p>
<p style="text-align: right;">Page 43</p> <p>1 Solutions?</p> <p>2 A. I left December 2016.</p> <p>3 Q. So you were only there for less than a</p> <p>4 year. Is that fair?</p> <p>5 A. Yes.</p> <p>6 Q. And did you resign or were you</p> <p>7 terminated?</p> <p>8 A. I resigned.</p> <p>9 Q. And why did you only stay at Global</p> <p>10 Composite Solutions for less than a year?</p> <p>11 A. I was working on a contract that was a</p> <p>12 year, and I knew I was only going to stay there</p> <p>13 for a year when I took the job.</p> <p>14 Q. And they didn't give you an opportunity</p> <p>15 to stay on?</p> <p>16 A. They did.</p> <p>17 Q. But you just chose not to?</p> <p>18 A. That's correct.</p> <p>19 Q. And did you have a job opportunity when</p> <p>20 you resigned in December of 2016 from Globe</p> <p>21 Compact Solutions?</p> <p>22 A. It's Globe Composite Solutions.</p> <p>23 Q. Did you have a job offer when you</p> <p>24 resigned?</p>	<p style="text-align: right;">Page 45</p> <p>1 company, and the job they offered me in December</p> <p>2 was senior manager of something, but I can't</p> <p>3 remember the full title.</p> <p>4 Q. Okay. So we'll look at that in a minute,</p> <p>5 but what were the duties and responsibilities of</p> <p>6 the job that you started in at Wayfair?</p> <p>7 A. I was working on flow optimization and</p> <p>8 standardization and the middle-mile network.</p> <p>9 Q. And what is the "middle-mile network"?</p> <p>10 A. That is a final mile transportation</p> <p>11 network to get freight directly to a customer.</p> <p>12 Q. And when you first went to work for</p> <p>13 Wayfair -- when did you first take that -- start</p> <p>14 that job at Wayfair?</p> <p>15 A. January 2017.</p> <p>16 Q. And when you first went to work for</p> <p>17 Wayfair in January 2017, where were you</p> <p>18 geographically based?</p> <p>19 A. In Boston.</p> <p>20 Q. Did that ever change during your tenure</p> <p>21 with Wayfair? Did you ever move somewhere else</p> <p>22 geographically?</p> <p>23 A. I did.</p> <p>24 Q. Where did you move -- well, strike that.</p>



<p style="text-align: right;">Page 46</p> <p>1 Let me start again.</p> <p>2 Would it be fair to say that your job</p> <p>3 with Wayfair, when you first started in January</p> <p>4 of 2017, was as a sales and operations senior</p> <p>5 manager? Does that sound familiar?</p> <p>6 A. Not the sales piece.</p> <p>7 Q. Okay. Just operations senior manager?</p> <p>8 A. I don't think I was in operations. I</p> <p>9 know I was a senior manager, but I can't remember</p> <p>10 the full title.</p> <p>11 Q. Okay. So let's just stop with that</p> <p>12 position in Boston for a moment.</p> <p>13 How were you compensated? Did you</p> <p>14 receive a salary?</p> <p>15 A. I did receive a salary.</p> <p>16 Q. Do you recall what your salary was when</p> <p>17 you first started at Wayfair?</p> <p>18 A. I believe my base salary was 110.</p> <p>19 Q. Okay. And did you receive any other form</p> <p>20 of compensation when you first went to Wayfair?</p> <p>21 Bonus? Stock options? Anything else?</p> <p>22 A. As part of my compensation package?</p> <p>23 Q. Yes.</p> <p>24 A. The package included stock, restricted</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. When was that and to whom did you report</p> <p>2 when that changed?</p> <p>3 A. I don't remember when it changed, and I</p> <p>4 reported to this -- the initial guy and then I</p> <p>5 reported to Matt Witte.</p> <p>6 Q. And you were still reporting to</p> <p>7 Matt Witte when you were a senior manager; is</p> <p>8 that correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And were you still in Boston at that</p> <p>11 point or did you move locations?</p> <p>12 A. I was still in Boston.</p> <p>13 Q. Okay. At some point at Wayfair were you</p> <p>14 promoted to associate director?</p> <p>15 A. At some point I was promoted to associate</p> <p>16 director.</p> <p>17 Q. And in that job as associate director,</p> <p>18 did your duties and responsibilities change?</p> <p>19 A. They expanded.</p> <p>20 Q. And what did they include once they</p> <p>21 expanded?</p> <p>22 A. They included a lot of stuff. Launching</p> <p>23 buildings, launching a project management office,</p> <p>24 working on developing reporting, working with</p>
<p style="text-align: right;">Page 47</p> <p>1 stock units, and bonus, and medical, dental</p> <p>2 benefits.</p> <p>3 Q. And do you know what the bonus was based</p> <p>4 on? Was it based on your individual contribution</p> <p>5 or was it based on how well the company did or</p> <p>6 both?</p> <p>7 A. I don't know how it was based.</p> <p>8 Q. Okay. How many others were in the same</p> <p>9 job title that you were in at Wayfair, if you</p> <p>10 know?</p> <p>11 A. I have no idea.</p> <p>12 Q. Did people report to you as a senior</p> <p>13 manager when you first went to Wayfair?</p> <p>14 A. When I first started? Like, in January?</p> <p>15 Q. January of 2017, as a senior manager, did</p> <p>16 you have direct reports?</p> <p>17 A. Not in January of 2017.</p> <p>18 Q. To whom did you report in January of</p> <p>19 2017? Did you report to Matt Witte?</p> <p>20 A. No. If you hadn't asked me, I wouldn't</p> <p>21 have remembered his name. Somebody else.</p> <p>22 Q. Okay. At some point did it change -- the</p> <p>23 person that you reported to change?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 facilities and real estate to stand up buildings,</p> <p>2 managing capital projects, starting all of the</p> <p>3 capital reporting, building out an analyst team,</p> <p>4 working with capacity to create standards for</p> <p>5 launching systems, managing relationships with</p> <p>6 vendors, executing projects, closing out</p> <p>7 projects, and reporting out on progress.</p> <p>8 Q. And in this job as an associate director,</p> <p>9 is it fair to say you now had people reporting to</p> <p>10 you for the first time?</p> <p>11 A. That's not fair to say.</p> <p>12 Q. So I think you told me that as a senior</p> <p>13 manager there was no one reporting to you. Did I</p> <p>14 mess that up?</p> <p>15 A. Yes. You messed that up.</p> <p>16 Q. For the entire period that you were</p> <p>17 senior manager did you have direct reports?</p> <p>18 A. Not for the entire period.</p> <p>19 Q. Okay. So at some point you had people</p> <p>20 reporting to you as a senior manager; is that</p> <p>21 correct?</p> <p>22 A. That is correct.</p> <p>23 Q. Okay. When did that change? When were</p> <p>24 you still a senior manager but you had people</p>

<p style="text-align: right;">Page 50</p> <p>1 reporting to you?</p> <p>2 A. I can't remember the first direct report.</p> <p>3 I started -- it was that first year. Sometime in</p> <p>4 that first year in 2017.</p> <p>5 Q. And who was reporting to you? How many</p> <p>6 people did you have reporting to you as a senior</p> <p>7 manager?</p> <p>8 A. I had Steven. I had -- Mike was</p> <p>9 reporting to me as a senior manager.</p> <p>10 Q. Mike McDole?</p> <p>11 A. Yeah. I had -- I want to -- three to</p> <p>12 five, I think. I'd have to write it down and</p> <p>13 look through my notes.</p> <p>14 Q. We'll go back to that. And do you know</p> <p>15 what Stephen's last name is?</p> <p>16 A. Grimes.</p> <p>17 Q. Do you know any of the other people that</p> <p>18 were reporting to you during the period you were</p> <p>19 senior manager?</p> <p>20 A. I'd have to look.</p> <p>21 Q. So in terms of -- strike that.</p> <p>22 During your employment with Wayfair, how</p> <p>23 many people did you personally recruit to come to</p> <p>24 Wayfair?</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Did you get any kind of financial</p> <p>2 incentive, as an employee of Wayfair, to recruit</p> <p>3 people from inside Wayfair to your team?</p> <p>4 A. No.</p> <p>5 Q. Did you get any financial incentive, as a</p> <p>6 Wayfair employee, to recruit people from outside</p> <p>7 of Wayfair to your team?</p> <p>8 A. Did I personally or was it a company</p> <p>9 policy?</p> <p>10 Q. No. Did you -- were you able to get any</p> <p>11 additional compensation when you were -- when you</p> <p>12 recruited someone from outside of Wayfair to your</p> <p>13 team?</p> <p>14 A. No.</p> <p>15 Q. Okay. At some point did you recruit</p> <p>16 Mike McDole to come to Wayfair from Amazon?</p> <p>17 A. Can you restate that question?</p> <p>18 Q. At some point did you reach out to</p> <p>19 Mr. McDole and try to recruit him to come work</p> <p>20 for you at Amazon -- I'm sorry -- at Wayfair?</p> <p>21 A. Yes.</p> <p>22 And can you hold on one second? Can I</p> <p>23 just turn down my AC? I'm freezing.</p> <p>24 Q. Yes.</p>
<p style="text-align: right;">Page 51</p> <p>1 A. I have no idea.</p> <p>2 Q. Was it more than one?</p> <p>3 A. Yes. It was more than one.</p> <p>4 Q. Was it more than five?</p> <p>5 A. Can I write it down and count?</p> <p>6 Q. Sure.</p> <p>7 A. So I've -- can I ask you, like, a</p> <p>8 clarifying question?</p> <p>9 Q. Sure.</p> <p>10 A. Are you counting people who were on</p> <p>11 different teams and then I recruited them to my</p> <p>12 team?</p> <p>13 Q. I'm counting people who were outside of</p> <p>14 Wayfair. Let's do an outside of Wayfair and then</p> <p>15 an inside-of-Wayfair recruiting, just so we can</p> <p>16 separate them.</p> <p>17 So inside of Wayfair, how many people did</p> <p>18 you recruit to come to your team?</p> <p>19 A. Hold on. I'm still counting everyone.</p> <p>20 I'm sorry.</p> <p>21 So outside of Wayfair, I would say -- I</p> <p>22 would estimate five people, and inside of</p> <p>23 Wayfair, recruiting them from a different team to</p> <p>24 join my team, is two.</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Hold on.</p> <p>2 Q. As you sit here today, do you remember</p> <p>3 when it was that you reached out to Mr. McDole</p> <p>4 and asked him if he would come work for you at</p> <p>5 Wayfair?</p> <p>6 A. I don't remember.</p> <p>7 Q. Do you remember what year it was?</p> <p>8 A. I'd have to look.</p> <p>9 Q. What position were you in when you</p> <p>10 reached out to him to come work for you at</p> <p>11 Wayfair?</p> <p>12 A. I was a senior manager.</p> <p>13 Q. Okay. So we'll look at some documents</p> <p>14 that may refresh your recollection, but as you</p> <p>15 sit here today -- well, let's look at those</p> <p>16 documents just so we can ground ourselves in</p> <p>17 time. Let me see if I can do this. Bear with</p> <p>18 me.</p> <p>19 (Exhibit No. 2 marked for</p> <p>20 identification.)</p> <p>21 BY MS. KAPPELMAN:</p> <p>22 Q. Can you see this document that I have up</p> <p>23 on the screen?</p> <p>24 A. I can.</p>

Page 54

1 Q. I'm going to show you the whole document  
2 in a second, but do you recognize the top  
3 document as an e-mail you would have sent on  
4 July 17, 2018, as part of your Wayfair duties?  
5 A. Can I ask a really silly question?  
6 Q. Sure.  
7 A. How do I know I sent this?  
8 Q. Well, I'm asking you if you recognize  
9 this as what an e-mail you would have sent looks  
10 like. If you're claiming you don't remember any  
11 of these e-mails, I'll certainly show them to you  
12 and you can tell me you don't remember them.  
13 But I'm asking you: Assuming I didn't  
14 create it on a whole cloth and we pulled it down  
15 from the server, does this look like the kind of  
16 thing you would see while you worked at Wayfair  
17 if you sent an e-mail to someone else?  
18 A. This looks like the kind of e-mail I  
19 would have sent at Wayfair to someone else.  
20 Q. Okay. So let's just take a moment since  
21 you're not sure if it's real. If you sent an  
22 e-mail to -- first of all, who's Molly Ahadpour?  
23 Do you know someone with that name?  
24 A. I've never met her but I know about her,

Page 55

1 but I don't know what role she has. She's in  
2 some type of recruiting HR role.  
3 Q. Okay. As you sit here today, do you  
4 remember having correspondence with Molly over  
5 the years that you worked at Wayfair about  
6 anything?  
7 A. I remember -- I know we e-mailed.  
8 Q. Okay. And when you would send an e-mail  
9 during the period you worked at Wayfair, would it  
10 look like this? Would it have your name, the  
11 date, the time, the person you were sending it to  
12 with a subject line?  
13 A. It would look like this.  
14 Q. So let's look at this particular one.  
15 The subject line is "Mike McDole," and the date  
16 is July 17, 2018. Take a moment to read this  
17 e-mail, and let me know if you recognize it. If  
18 you remember sending it.  
19 A. I don't remember sending that.  
20 Q. Okay. So does it refresh your  
21 recollection, though, that when you were  
22 recruiting Mr. McDole it was in the summer of  
23 2018?  
24 A. Yes.

Page 56

1 Q. Okay. And let's sort of look -- I'm  
2 going to go down and let you read the very first  
3 e-mail on this string just so we can see it.  
4 This e-mail, if you can see the whole thing, is  
5 from you, dated July 17, 2018, to an Anna Doumas,  
6 D-o-u-m-a-s. Do you see that?  
7 A. Yes, I do.  
8 Q. And the subject line again is "Mike  
9 McDole"?  
10 A. That is correct.  
11 Q. And it says -- you purportedly are  
12 writing to Anna.  
13 "Hi. Any updates on comp bands for  
14 Mike?"  
15 A. I see that.  
16 Q. As you sit here today, do you recall  
17 sending this e-mail to an Anna Doumas about the  
18 compensation that you could pay Mr. McDole if you  
19 were to recruit him to the Wayfair company?  
20 A. I don't remember sending this e-mail.  
21 Q. So do you remember that in July of 2018  
22 you were lobbying to pay Mr. McDole a higher  
23 salary than folks wanted to offer him?  
24 A. I don't remember that.

Page 57

1 Q. Do you remember -- let's look at this one  
2 dated July 17, 2018. Let's just see if you  
3 can -- I want to make sure you can see the whole  
4 thing. So Molly writes to you and Anna Doumas  
5 and Kelsey Lundstrom.  
6 By the way, who's Anna and who's Kelsey?  
7 A. I don't remember their titles.  
8 Q. Were they in recruiting? HR? Comp?  
9 Something like that?  
10 A. I think so.  
11 Q. So looking at this chain of e-mails, it  
12 does not refresh your recollection at all about  
13 conversations you were having with these three  
14 people about recruiting Mr. McDole and his base?  
15 A. Can you repeat that question?  
16 Q. Sure. Does this refresh your  
17 recollection at all, looking at this chain of  
18 e-mails, that you were communicating with Molly,  
19 Anna, and Kelsey about what you would pay  
20 Mr. McDole if you were able to bring him on board  
21 from Amazon? Do you remember anything about this  
22 conversation?  
23 A. I -- looking at this, I am refreshed that  
24 there was some sort of conversation. I cannot

<p style="text-align: right;">Page 58</p> <p>1 remember any of the details.</p> <p>2 Q. Okay. So just to put this on a</p> <p>3 chronological timeline, Mr. McDole -- you worked</p> <p>4 with Mr. McDole in -- at Amazon prior to December</p> <p>5 2015 when you left. Correct? And you've</p> <p>6 outlined for me all of the interactions you've</p> <p>7 had with him; right? At Amazon.</p> <p>8 A. What do you mean by worked with him? We</p> <p>9 were employed by the same company.</p> <p>10 Q. Right. And you outlined for me the only</p> <p>11 two in-person interactions you had with him;</p> <p>12 right?</p> <p>13 A. That I remember.</p> <p>14 Q. Right. And we talked about any other</p> <p>15 texts or e-mails or phone calls that you</p> <p>16 remember, and you told me everything else you</p> <p>17 remember about that period when you both worked</p> <p>18 at Amazon; is that correct?</p> <p>19 A. I believe I have.</p> <p>20 Q. Okay. And then we also talked about a</p> <p>21 trip in December, December of 2017, right after</p> <p>22 you left Amazon when he came to your parents'</p> <p>23 house in Cohasset for two or three days.</p> <p>24 Correct?</p>	<p style="text-align: right;">Page 60</p> <p>1 the period we're talking about?</p> <p>2 Q. Yes. During that period that you've just</p> <p>3 outlined for me, between the Cohasset visit and</p> <p>4 your e-mails here trying to recruit Mr. McDole to</p> <p>5 Wayfair, did you have any physical in-person</p> <p>6 interactions with Mr. McDole?</p> <p>7 A. No.</p> <p>8 Q. Did you text with Mr. McDole during that</p> <p>9 period between December 2015 and July 2018?</p> <p>10 A. I can't remember.</p> <p>11 Q. Did you have phone calls with Mr. McDole</p> <p>12 between December 2015 and July 2018 when you</p> <p>13 tried to -- when you recruited him to Wayfair?</p> <p>14 A. I can't remember.</p> <p>15 Q. So how did it come to be that 2 1/2 years</p> <p>16 after the Cohasset visit at your parents' house,</p> <p>17 when the two of you kissed, that you reached out</p> <p>18 to him and asked him to come work for you at</p> <p>19 Wayfair?</p> <p>20 A. How did that come to be?</p> <p>21 Q. Yes.</p> <p>22 A. I believe he had reached out to me on</p> <p>23 LinkedIn between December 2015 and July 2018.</p> <p>24 Q. When? Was it soon after December 2015?</p>
<p style="text-align: right;">Page 59</p> <p>1 A. I don't think it was December 2017.</p> <p>2 Q. I'm sorry. December 2015, if I misspoke.</p> <p>3 I meant December 2015 he came to your</p> <p>4 parents' house in Cohasset for two or three days.</p> <p>5 So far, so good?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. So now, 2 1/2 years later -- is it</p> <p>8 2 1/2 or 3 1/2? '15, '16, '17, '18. 3 1/2 years</p> <p>9 later, he is -- in July of 2018 you are</p> <p>10 recruiting him to come work for you at Wayfair.</p> <p>11 Is that true?</p> <p>12 A. I don't know if it was exactly 3 1/2, but</p> <p>13 it was July --</p> <p>14 Q. The period between December of 2015 and</p> <p>15 July of 2018 passed before you started recruiting</p> <p>16 him to come to Wayfair; right?</p> <p>17 MR. GOODMAN: Objection. That would be</p> <p>18 2 1/2, Counsel.</p> <p>19 BY MS. KAPPELMAN:</p> <p>20 Q. Either way, the period between December</p> <p>21 2015 and July 2018 is the period we're talking</p> <p>22 about. Correct?</p> <p>23 A. Are you -- sorry. You're saying we're</p> <p>24 talking about December 2015 to July 2018? That's</p>	<p style="text-align: right;">Page 61</p> <p>1 A. I'd have to check the date, but it was</p> <p>2 not soon after.</p> <p>3 Q. Do you remember what year it was?</p> <p>4 A. I don't remember the year. I have the</p> <p>5 message. I'd have to look.</p> <p>6 Q. So as you sit here today, Ms. Forsythe,</p> <p>7 you can't recall -- other than him reaching out</p> <p>8 to you on LinkedIn, you can't recall any other</p> <p>9 communications you had with Mr. McDole between</p> <p>10 the December 2015 visit to Cohasset and this July</p> <p>11 2018 period when you're recruiting him to come to</p> <p>12 Wayfair?</p> <p>13 A. He had messaged me on LinkedIn sometime</p> <p>14 in 2017.</p> <p>15 Q. Other than that, can you think of any</p> <p>16 other communication, text, e-mail, phone call</p> <p>17 that you had with Mr. McDole between his Cohasset</p> <p>18 visit and your trying to recruit him to Wayfair?</p> <p>19 A. Sorry. Can I just ask you: Are you</p> <p>20 asking if I remember the details of conversations</p> <p>21 or if there might have been communication?</p> <p>22 Q. Any communication. Do you remember any</p> <p>23 communication with Mr. McDole between</p> <p>24 December '15, when he visited you in Cohasset for</p>

<p style="text-align: right;">Page 62</p> <p>1 two or three days, until July 2018 when you're  2 recruiting him to come work for you at Wayfair?  3 A. When he reached out to me on LinkedIn in  4 2017.  5 Q. And other than that, can you recall any  6 other communications? That's my question.  7 A. I believe we communicated, but I can't  8 remember when, what, or how.  9 Q. When you reached out to him in July of  10 2018 to hire him to come work for you, did you  11 say anything about the fact that the last time  12 you'd seen each other you'd had a romantic  13 interlude at your parents' house in Cohasset?  14 A. No.  15 Q. Did you ever talk to Mr. McDole, during  16 the recruiting process to Wayfair, about the fact  17 that the last time you'd seen each other was when  18 you had a romantic interlude at Cohasset? Did  19 you bring it up? Did he bring it up?  20 A. Sorry. Can you say the question again?  21 Q. Did either of you bring up the fact,  22 during the recruiting process in July of 2018,  23 that the two of you had had a romantic interlude  24 at your parents' house in Cohasset? Did anybody</p>	<p style="text-align: right;">Page 64</p> <p>1 BY MS. KAPPELMAN:  2 Q. You can answer.  3 A. I can answer that? What was the  4 question?  5 Q. Even though you were hiring Mr. McDole to  6 report to you in July of 2018, you didn't think  7 it was important to discuss with him the fact  8 that the last time you'd seen each other was when  9 you had a romantic interlude at your parents'  10 house in Cohasset?  11 A. I did not think that was important.  12 Q. And he didn't bring it up either?  13 A. I don't remember.  14 Q. So he may have brought it up. You just  15 don't recall?  16 A. He may have brought it up. I don't  17 recall.  18 Q. Is it fair to say that you lobbied hard  19 to hire Mr. McDole in the summer of 2018?  20 MR. GOODMAN: Objection. Argumentative.  21 BY MS. KAPPELMAN:  22 Q. You can answer.  23 A. I don't know what "lobby hard" is. I  24 didn't lobby any differently with McDole than</p>
<p style="text-align: right;">Page 63</p> <p>1 mention it?  2 A. I don't believe we did.  3 Q. Okay. And this is even though you were  4 hiring Mr. McDole to come work for you; right?  5 This was -- you weren't going to be peers. He  6 was going to report to you. Correct? At  7 Wayfair.  8 A. We had the same job level and title.  9 Q. Okay. So you didn't think he was  10 reporting to you when you hired him?  11 A. That's not correct.  12 Q. Okay. So let's try that again.  13 Even though you were hiring Mr. McDole to  14 report to you, in the summer of 2018 you didn't  15 think it was important to talk about the fact  16 that the last time you'd seen each other you'd  17 had a romantic interlude at your parents' house  18 in Cohasset?  19 MR. GOODMAN: Objection. Argumentative.  20 BY MS. KAPPELMAN:  21 Q. You can answer.  22 A. I can answer or Bob can answer?  23 MR. GOODMAN: You can answer.  24</p>	<p style="text-align: right;">Page 65</p> <p>1 anyone else I recruited.  2 Q. Well, let's look at these e-mails. They  3 were suggesting that he receive a certain bonus  4 and cash merit increase when they hired him, and  5 you actually asked for him to be paid more;  6 right?  7 A. I'd have to read the e-mail.  8 Q. Okay. So let's do that. Let's do that  9 because I want you to read the e-mails. Start  10 here and let me know when you're done with this  11 one.  12 MR. GOODMAN: I'll just send that one to  13 her.  14 MS. KAPPELMAN: I don't want her to do  15 that actually. Thank you, though, Bob. I don't  16 want --  17 (Simultaneous crosstalk.)  18 MR. GOODMAN: I want her to be able to  19 see the entire e-mail.  20 MS. KAPPELMAN: Bob, I don't want her to  21 go off of the video to read the e-mail. I want  22 her to stay on this. So if she needs more time,  23 we'll take as much time as she needs to read the  24 document.</p>

<p style="text-align: right;">Page 78</p> <p>1 What was your question again?</p> <p>2 Q. The question is: Did you see this EEOC</p> <p>3 statement when it was filed?</p> <p>4 A. I did.</p> <p>5 Q. Okay. And was it true and correct to the</p> <p>6 best of your knowledge when you filed it with the</p> <p>7 EEOC?</p> <p>8 A. Yes.</p> <p>9 Q. Is there anything in this EEOC charge</p> <p>10 that explains that you and Mr. McDole had a</p> <p>11 consensual -- a welcome romantic interlude at</p> <p>12 your parents' house in Cohasset before you hired</p> <p>13 him to Wayfair?</p> <p>14 A. Can you say that again?</p> <p>15 Q. Is there anything in this EEOC charge</p> <p>16 that says that you and Mr. McDole had a welcome</p> <p>17 romantic interlude at your parents' house in</p> <p>18 Cohasset before you hired him to Wayfair?</p> <p>19 A. No.</p> <p>20 Q. Did you ever tell Mr. Witte that you and</p> <p>21 Mr. McDole had had a consensual interlude at your</p> <p>22 parents' house in Cohasset when you were trying</p> <p>23 to hire him to report to you at Wayfair?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 80</p> <p>1 harassment. When you made your complaint of</p> <p>2 sexual harassment to Mr. McKnight, did you tell</p> <p>3 Mr. McKnight that you and Mr. McDole had had a</p> <p>4 prior consensual interlude at your parents' house</p> <p>5 in Cohasset?</p> <p>6 A. I never made a complaint to Mr. McKnight.</p> <p>7 Q. Did you ever tell Mr. McKnight that you</p> <p>8 and Mr. McDole had had a prior sexual interlude</p> <p>9 at your parents' house in Cohasset?</p> <p>10 A. I never had a sexual interlude with</p> <p>11 Mr. McDole.</p> <p>12 Q. Did you tell him that you had kissed</p> <p>13 McDole and had him to your parents' house in</p> <p>14 Cohasset?</p> <p>15 A. Did I tell who?</p> <p>16 Q. Kory McKnight. Same guy we've been</p> <p>17 talking about. Did you tell Kory McKnight that</p> <p>18 you had had Mr. McDole, in 2015, to your parents'</p> <p>19 house in Cohasset and that the two of you had</p> <p>20 kissed and he had stayed over?</p> <p>21 A. No.</p> <p>22 Q. When Trevor Shaffer-Figueroa was</p> <p>23 investigating your sexual harassment complaint</p> <p>24 against Mr. McDole, did you tell him that you and</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. What did you tell Mr. Witte about your</p> <p>2 prior interactions with Mr. McDole when you went</p> <p>3 to hire him in July of 2018?</p> <p>4 A. Professional interactions or personal</p> <p>5 interactions?</p> <p>6 Q. The question is: What did you tell</p> <p>7 Mr. Witte about your prior interactions with</p> <p>8 Mr. McDole when you were trying to hire him in</p> <p>9 July of 2018?</p> <p>10 A. I had told Witte that I had never worked</p> <p>11 with McDole. We were both employed by Amazon and</p> <p>12 that McDole was a phenomenal operations manager,</p> <p>13 incredibly smart, hardworking, really good at his</p> <p>14 job, and I thought he would be great on the team.</p> <p>15 Q. And you didn't think it was relevant that</p> <p>16 Mr. McDole and you had had a prior romantic</p> <p>17 interlude before you were hiring him to report to</p> <p>18 you?</p> <p>19 A. No.</p> <p>20 MR. GOODMAN: Objection. Argumentative.</p> <p>21 You can answer.</p> <p>22 BY MS. KAPPELMAN:</p> <p>23 Q. When you made your complaint -- and we're</p> <p>24 going to get to your complaint of sexual</p>	<p style="text-align: right;">Page 81</p> <p>1 McDole had spent three days at your parents'</p> <p>2 house in Cohasset and had kissed in a welcome</p> <p>3 consensual way?</p> <p>4 A. I don't know if it was three days. It</p> <p>5 might have been two days. I don't remember.</p> <p>6 Q. Is that really your answer? Is that</p> <p>7 really your answer to my question, or are you</p> <p>8 going to answer my question?</p> <p>9 Did you tell Trevor Shaffer-Figueroa</p> <p>10 about your welcome interaction with Mr. McDole in</p> <p>11 December 2015?</p> <p>12 A. No.</p> <p>13 Q. Even though you had complained that</p> <p>14 Mr. McDole was sexually harassing you and you</p> <p>15 were participating in an investigation of that</p> <p>16 sexual harassment, you chose not to tell</p> <p>17 Mr. Figueroa that the two of you had consensual</p> <p>18 kisses at your parents' house in Cohasset?</p> <p>19 MR. GOODMAN: Objection. Argumentative.</p> <p>20 Object to the form.</p> <p>21 BY MS. KAPPELMAN:</p> <p>22 Q. You can answer. What's the answer,</p> <p>23 Ms. Forsythe?</p> <p>24 Did you tell the investigator of your</p>

<p style="text-align: right;">Page 82</p> <p>1 sexual harassment complaint against Mr. McDole</p> <p>2 that the two of you had had a consensual</p> <p>3 interlude at your parents' house in Cohasset?</p> <p>4 MR. GOODMAN: Same objection.</p> <p>5 BY MS. KAPPELMAN:</p> <p>6 Q. You can answer.</p> <p>7 A. Sorry. Can you say that again?</p> <p>8 Q. We can have the court reporter repeat it</p> <p>9 again if you didn't hear it.</p> <p>10 A. Thank you.</p> <p>11 MS. KAPPELMAN: Kim, you can read that</p> <p>12 question again?</p> <p>13 (Whereupon the prior question was read</p> <p>14 back.)</p> <p>15 A. Who's the investigator?</p> <p>16 BY MS. KAPPELMAN:</p> <p>17 Q. Trevor Shaffer-Figueroa. Do you remember</p> <p>18 that investigation?</p> <p>19 A. I do remember that. I --</p> <p>20 Q. Right.</p> <p>21 A. No, I did not tell Shaffer-Figueroa.</p> <p>22 Q. Why?</p> <p>23 MR. GOODMAN: Objection. Argumentative.</p> <p>24</p>	<p style="text-align: right;">Page 84</p> <p>1 tasks and ignoring me. He was very inconsistent.</p> <p>2 Q. When would you say the sexual harassment</p> <p>3 that you've complained of started?</p> <p>4 A. The sexual harassment or, like, the just</p> <p>5 general harassment?</p> <p>6 Q. Well, what we're here about is sexual</p> <p>7 harassment. It's a legal term. So that's what</p> <p>8 I'd like to know is when did the sexual</p> <p>9 harassment start?</p> <p>10 A. The first time he physically, sexually</p> <p>11 harassed me, where he put his hands on me, was in</p> <p>12 January, I think, of 2019.</p> <p>13 Q. Okay. Is it fair to say that you were</p> <p>14 commending his performance as late as March of</p> <p>15 2019 to his new manager?</p> <p>16 A. Looking at this e-mail?</p> <p>17 Q. Well, you can look at the e-mail if you</p> <p>18 want, but do you remember, as you sit here today,</p> <p>19 that you were commending Mr. McDole's performance</p> <p>20 as recently as March of 2019 to his new manager?</p> <p>21 A. Let's see. I don't remember the date.</p> <p>22 Q. Okay. Well, March 14, 2019, at</p> <p>23 4:44 p.m., you say to Genaro Bugarin -- who is</p> <p>24 Genaro Bugarin, by the way, for the record?</p>
<p style="text-align: right;">Page 83</p> <p>1 BY MS. KAPPELMAN:</p> <p>2 Q. Did he ask you what sort of interactions</p> <p>3 you had had with Mr. McDole prior to coming to</p> <p>4 Wayfair?</p> <p>5 A. No. I don't -- he might have. I don't</p> <p>6 remember.</p> <p>7 Q. Okay. So let's go back to when you</p> <p>8 recruited Mr. McDole to work at Wayfair. When</p> <p>9 did he first start at Wayfair?</p> <p>10 A. He started August -- July or August. I'd</p> <p>11 have to check.</p> <p>12 Q. 2018?</p> <p>13 A. 2018.</p> <p>14 Q. How would you describe Mr. McDole's</p> <p>15 professional performance on your team?</p> <p>16 A. Which -- like the duration of it?</p> <p>17 Q. At the beginning when he first started.</p> <p>18 A. His -- how would I describe it?</p> <p>19 Inconsistent.</p> <p>20 Q. Okay. Was he performing well for --</p> <p>21 let's just take the first six months until</p> <p>22 December of 2018. How did he perform?</p> <p>23 A. Sometimes he was awesome. He was a rock</p> <p>24 star some days. Other days he was ignoring his</p>	<p style="text-align: right;">Page 85</p> <p>1 A. He was the site director in Perris,</p> <p>2 California.</p> <p>3 Q. And Matt Witte was your manager; is that</p> <p>4 right?</p> <p>5 A. That is correct.</p> <p>6 Q. And at this time you write to Genaro and</p> <p>7 you say:</p> <p>8 "Mike is going to knock it out of the</p> <p>9 park in Lathrop and it makes sense to get him in</p> <p>10 that building sooner rather than later."</p> <p>11 Do you see that?</p> <p>12 A. Sorry. Can I just read that?</p> <p>13 Q. Just the last line is what I'm reading.</p> <p>14 A. Did I see that line? Yes. I see that</p> <p>15 line.</p> <p>16 Q. And you wrote that. I'm not making it</p> <p>17 up. That was your line about Mike McDole's</p> <p>18 performance; right? That you thought he was</p> <p>19 going to knock it out of the park.</p> <p>20 A. I don't remember writing this e-mail.</p> <p>21 Q. I didn't ask you if you remember writing</p> <p>22 it, Ms. Forsythe. I'm asking if you told</p> <p>23 Mr. McDole's new manager that you believed he was</p> <p>24 going to knock it out of the park in March of</p>

<p style="text-align: right;">Page 86</p> <p>1 2019.</p> <p>2 A. Sorry. This is a really stupid question.</p> <p>3 This is assuming this is one of my e-mails;</p> <p>4 right?</p> <p>5 Q. Are you really sitting here and saying</p> <p>6 you don't think this is your e-mail? Is that</p> <p>7 your position, Ms. Forsythe?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. All right. Well, assuming it's</p> <p>10 your e-mail and we didn't just draft it out of</p> <p>11 whole cloth from the server, because you don't</p> <p>12 remember writing it, do you remember telling Mike</p> <p>13 McDole's new manager that you thought he was</p> <p>14 going to knock it out of the park in March of</p> <p>15 2019?</p> <p>16 A. I don't remember telling Genaro that I</p> <p>17 thought Mike would knock it out of the park.</p> <p>18 Q. Okay. When did you -- did you complain</p> <p>19 to somebody in January of 2019 that Mr. McDole</p> <p>20 was sexually harassing you?</p> <p>21 A. No, I didn't.</p> <p>22 Q. And Mr. McDole, by the way, was reporting</p> <p>23 to you; right? I mean, you were his manager.</p> <p>24 A. That is -- in January 2019?</p>	<p style="text-align: right;">Page 88</p> <p>1 A. Yes, I did.</p> <p>2 Q. Okay. You told him that you felt you --</p> <p>3 he was subjecting you to unwelcome sexual</p> <p>4 harassment in January 2019?</p> <p>5 A. I did not say that.</p> <p>6 Q. Okay. Did you tell him in January of</p> <p>7 2019 that he was subjecting you to unwelcome</p> <p>8 sexual harassment?</p> <p>9 A. No, I did not.</p> <p>10 Q. Okay. Did you formally evaluate him and</p> <p>11 add his inappropriate behavior to any performance</p> <p>12 evaluation that you gave to him as your</p> <p>13 subordinate?</p> <p>14 A. What do you mean by "inappropriate</p> <p>15 behavior"?</p> <p>16 Q. The fact that he sexually harassed you</p> <p>17 you say in January of 2019. Did you give him any</p> <p>18 formal reprimand at all?</p> <p>19 A. No, I did not.</p> <p>20 Q. Did you give him any informal reprimand</p> <p>21 at all during that period of time?</p> <p>22 A. Regarding what?</p> <p>23 Q. That behavior. The alleged sexual</p> <p>24 harassment in January of 2019.</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Yes.</p> <p>2 A. Yes. That's correct.</p> <p>3 Q. And so you had the power to evaluate his</p> <p>4 performance. Correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And you had the power to issue him verbal</p> <p>7 warnings or written warnings; right?</p> <p>8 A. I --</p> <p>9 Q. As his manager, Ms. Forsythe.</p> <p>10 A. I don't know if I had to do it or my</p> <p>11 manager had to do a written warning.</p> <p>12 Q. But the point being, you were his manager</p> <p>13 and so it was -- the onus was on you. If he was</p> <p>14 doing something inappropriate, either</p> <p>15 professionally or personally, his manager would</p> <p>16 have been the one to correct it; right?</p> <p>17 A. It would depend.</p> <p>18 Q. Well, did you issue him any written</p> <p>19 warnings in January of 2019 for inappropriate</p> <p>20 behavior?</p> <p>21 A. No, I did not.</p> <p>22 Q. Did you sit down with him verbally and</p> <p>23 tell him that his behavior towards you was</p> <p>24 inappropriate?</p>	<p style="text-align: right;">Page 89</p> <p>1 A. Yes, I did.</p> <p>2 Q. Okay. What did you say to him about the</p> <p>3 January 2019 incident that you claim is sexual</p> <p>4 harassment?</p> <p>5 A. I didn't say anything about that specific</p> <p>6 incident.</p> <p>7 Q. Okay. In -- let's look -- are there</p> <p>8 periods of time when you and Mr. McDole were</p> <p>9 friendly and got along well?</p> <p>10 A. For the duration of us knowing each</p> <p>11 other?</p> <p>12 Q. During this period from January 2019</p> <p>13 until you brought your sexual harassment</p> <p>14 complaint, were there periods of time when the</p> <p>15 two of you got along well?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Even though you claim he was</p> <p>18 sexually harassing you?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Can you look at that document that</p> <p>21 we're going to mark?</p> <p>22 (Exhibit No. 4 marked for</p> <p>23 identification.)</p> <p>24</p>



<p style="text-align: right;">Page 90</p> <p>1 BY MS. KAPPELMAN:</p> <p>2 Q. Can you identify what this document would</p> <p>3 be, Ms. Forsythe?</p> <p>4 A. It looks like a -- messages between me</p> <p>5 and McDole.</p> <p>6 Q. And did you and McDole message each other</p> <p>7 through a work chat, Slack, or something like</p> <p>8 that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And at work an instant messenger</p> <p>11 is called a Slack; is that right?</p> <p>12 A. We also had Skype at one point.</p> <p>13 Q. So looking at this can you tell whether</p> <p>14 this is Slack or Skype?</p> <p>15 A. This was after Skype got disbanded, so</p> <p>16 this looks like a Slack message.</p> <p>17 Q. So March 26, 2019, you and Mike McDole</p> <p>18 were having a Slack conversation; is that right?</p> <p>19 A. It appears to be correct.</p> <p>20 Q. And is there a point at the bottom where</p> <p>21 you say to him, "You're the best"?</p> <p>22 A. I can read that, yes.</p> <p>23 Q. Okay. So is this the period of time</p> <p>24 during which you say Mr. McDole was sexually</p>	<p style="text-align: right;">Page 92</p> <p>1 did you tell the sexual harasser that you wanted</p> <p>2 him to stay and not leave your team?</p> <p>3 A. I needed him to finish his project.</p> <p>4 Q. Okay. Directing your attention to the</p> <p>5 next exhibit, which I think is 5.</p> <p>6 (Exhibit No. 5 marked for</p> <p>7 identification.)</p> <p>8 BY MS. KAPPELMAN:</p> <p>9 Q. Do you recognize this exhibit? Is this</p> <p>10 a -- Slack messages between you and Mr. McDole</p> <p>11 from January 10, 2019?</p> <p>12 A. It looks like it is.</p> <p>13 Q. And you say to him, "Were you late</p> <p>14 because you were interviewing," and he says,</p> <p>15 "Yes."</p> <p>16 And you say, "Don't leave."</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do see that.</p> <p>19 Q. All right. So wouldn't you think that if</p> <p>20 someone was sexually harassing you, you wouldn't</p> <p>21 try to get them to stay?</p> <p>22 A. I can't answer that question.</p> <p>23 Q. Well, sure you can. You've brought a</p> <p>24 complaint alleging sexual harassment against</p>
<p style="text-align: right;">Page 91</p> <p>1 harassing you?</p> <p>2 A. Can you scroll back to the top?</p> <p>3 Q. Sure. The date is March 26, 2019, at</p> <p>4 2:59 -- almost 3 o'clock p.m. Is this the period</p> <p>5 of time that Mr. McDole was allegedly sexually</p> <p>6 harassing you?</p> <p>7 A. It was during that period of time.</p> <p>8 Q. And you tell him he's the best.</p> <p>9 A. That's what that says.</p> <p>10 Q. At some point did Mr. McDole tell you he</p> <p>11 actually -- the sexual harasser -- that he</p> <p>12 actually wanted to leave your team? He didn't</p> <p>13 want to report to you anymore.</p> <p>14 A. Yes. He told me that.</p> <p>15 Q. And did you welcome that since he was</p> <p>16 harassing you?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Did you actually tell him you</p> <p>19 didn't want him to leave?</p> <p>20 A. I did tell him that.</p> <p>21 Q. Okay. So let me see if I can get this</p> <p>22 straight. Mr. McDole is sexually harassing you</p> <p>23 and he tells you he wants to leave your team, but</p> <p>24 you tell him you want him to stay; right? Why</p>	<p style="text-align: right;">Page 93</p> <p>1 Mr. McDole who reported to you, and here you're</p> <p>2 saying you didn't want him to leave your team.</p> <p>3 So explain to me why.</p> <p>4 A. I needed him to finish his projects. I</p> <p>5 was short-staffed.</p> <p>6 Q. I see. Did you ever tell Mr. McDole that</p> <p>7 he was up for a promotion and so he should stay</p> <p>8 on your team so he could get that promotion?</p> <p>9 A. I don't remember.</p> <p>10 Q. I'm sorry, Ms. Forsythe. You don't</p> <p>11 remember if you ever told Mr. McDole that he was</p> <p>12 up for a promotion and he should stay so he could</p> <p>13 get it?</p> <p>14 A. I don't remember if I said he had a</p> <p>15 better potential of getting promoted on my team</p> <p>16 or another team. I don't remember what I said.</p> <p>17 Q. In any event, at some point Mr. McDole</p> <p>18 wanted to leave your team and he, in fact, did</p> <p>19 leave your team; right? He was no longer</p> <p>20 reporting to you; right?</p> <p>21 A. At some point, that is correct.</p> <p>22 Q. So the guy that you say was trying to</p> <p>23 sexually harass you actually asked to leave your</p> <p>24 team so he didn't have to have interaction with</p>

<p style="text-align: right;">Page 94</p> <p>1 you; is that right?</p> <p>2 MR. GOODMAN: Objection.</p> <p>3 A. I don't know why he asked to leave my</p> <p>4 team.</p> <p>5 BY MS. KAPPELMAN:</p> <p>6 Q. Okay. But he is the same guy you said</p> <p>7 was trying to sexually harass you; right?</p> <p>8 MR. GOODMAN: Objection.</p> <p>9 Mischaracterizes the evidence.</p> <p>10 A. Thank you.</p> <p>11 BY MS. KAPPELMAN:</p> <p>12 Q. Mr. McDole is the person you said was</p> <p>13 trying to sexually harass you; right?</p> <p>14 A. Mr. McDole is the person that I said was</p> <p>15 trying to sexually harass me.</p> <p>16 Q. And Mr. McDole is the same one that</p> <p>17 actually asked to leave your team; right?</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. And he left your team around</p> <p>20 April 1, 2019; is that right?</p> <p>21 A. Yes. That's correct.</p> <p>22 Q. Okay. And so when he left your team,</p> <p>23 where -- in April of 2019 where were you</p> <p>24 physically located?</p>	<p style="text-align: right;">Page 96</p> <p>1 2019?</p> <p>2 A. Professionally, yes.</p> <p>3 Q. So tell me how it would be that you would</p> <p>4 interact. How would your professional roles</p> <p>5 overlap?</p> <p>6 A. I had multiple projects in the buildings</p> <p>7 he was working in.</p> <p>8 Q. Okay. So how often would you physically</p> <p>9 be in the same space with Mr. McDole? Was it</p> <p>10 once a week? Once a month?</p> <p>11 A. It was not as frequent as once a week,</p> <p>12 but it was -- so it was more frequent than once a</p> <p>13 week. Less frequent than once every two months,</p> <p>14 I'd say.</p> <p>15 Q. Okay. And at some point did Mr. McDole</p> <p>16 suggest that the two of you should have a meeting</p> <p>17 with HR, human resources, at Wayfair?</p> <p>18 A. I suggested it.</p> <p>19 Q. Okay. I'm asking you to look at a series</p> <p>20 of e-mails and we'll start at the first one.</p> <p>21 (Exhibit No. 6 marked for</p> <p>22 identification.)</p> <p>23 BY MS. KAPPELMAN:</p> <p>24 Q. The first one -- I don't know if you</p>
<p style="text-align: right;">Page 95</p> <p>1 A. For the day?</p> <p>2 Q. No. Where were you physically working in</p> <p>3 April of 2019?</p> <p>4 A. I had an office, like a desk space, in</p> <p>5 Boston and I had a desk space in Hebron,</p> <p>6 Kentucky.</p> <p>7 Q. And when he left, where did he go</p> <p>8 physically? Mr. McDole.</p> <p>9 A. He was still technically living in Texas</p> <p>10 and he was commuting to California.</p> <p>11 Q. Okay. So the two of you didn't have desk</p> <p>12 space in the same physical location after April</p> <p>13 2019; is that correct?</p> <p>14 A. Or before April 19th?</p> <p>15 Q. I'm just asking about after April 2019.</p> <p>16 Correct?</p> <p>17 A. After April 19th we did not have desk</p> <p>18 space together.</p> <p>19 Q. And after April 19th he was no longer</p> <p>20 even reporting to you. Correct?</p> <p>21 A. That is correct.</p> <p>22 Q. Okay. Did you continue to interact with</p> <p>23 Mr. McDole, whom you said was sexually harassing</p> <p>24 you, after he left your supervision in April</p>	<p style="text-align: right;">Page 97</p> <p>1 recognize this e-mail string, but it purports to</p> <p>2 be an e-mail between you and Mr. McDole dated</p> <p>3 April 18, 2019. Do you see that?</p> <p>4 A. I see that date.</p> <p>5 Q. He says:</p> <p>6 "I fully support setting something up</p> <p>7 with HR, Genaro, Matt, you, and me. I think it's</p> <p>8 absolutely necessary. Let me know."</p> <p>9 Do you see that?</p> <p>10 A. I see that sentence.</p> <p>11 Q. Okay. So does this refresh your</p> <p>12 recollection that the two of you were trying to</p> <p>13 set up a meeting with HR in April of 2019?</p> <p>14 A. I was trying to set that up and he agreed</p> <p>15 to it.</p> <p>16 Q. And this is after he left your</p> <p>17 supervision; right?</p> <p>18 A. That's correct.</p> <p>19 Q. Okay. And you say:</p> <p>20 "Sorry I missed your call. Reach out</p> <p>21 next week."</p> <p>22 Do you see that?</p> <p>23 A. I see that.</p> <p>24 Q. And I know you don't remember e-mails and</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 you think maybe we made them up, but how about 2 these? Do these refresh your recollection that 3 this is something that you -- 4 A. Yes. 5 Q. -- and Mr. McDole you were talking about? 6 Okay. So these you recognize; right? 7 A. This was very traumatic for me. I 8 recognize this. 9 Q. Great. So he says to you, April 19th, 10 2019: 11 "Completely understand. I will 12 preliminarily reach out to members of the HR team 13 tomorrow to see if it's possible to arrange a 14 meeting." 15 Do you see that? 16 A. I see that sentence. 17 Q. So what was the meeting about? Why did 18 you suggest a meeting and why was he reaching out 19 to HR for a meeting? 20 A. I suggested a meeting because McDole was 21 incredibly aggressive and rude and demeaning and 22 bullying to me, and I could not handle it 23 anymore. I had reached my -- a really difficult 24 point for me with him being aggressive and</p>	<p style="text-align: right;">Page 100</p> <p>1 because he was bullying you and aggressive toward 2 you. Are those the reasons you were calling for 3 a meeting or were there other reasons? 4 A. I don't exactly remember the full range 5 of why I was calling that meeting. 6 Q. And by this time, I think you said, 7 Mr. McDole was already sexually harassing you; 8 right? 9 A. He had at this point, yes. 10 Q. And you hadn't complained to anybody yet? 11 A. No, I had not. 12 Q. And you hadn't told Mr. McDole at this 13 point that he was doing anything unwelcome? 14 MR. GOODMAN: Objection to form. 15 A. I had told him at that point that he -- I 16 don't remember the exact conversation but that he 17 needed to not be so belittling, demeaning, rude, 18 aggressive. That he needed to stop bullying and 19 harassing me. 20 BY MS. KAPPELMAN: 21 Q. Got it. Okay. 22 And why didn't the HR meeting happen even 23 though both you and Mr. McDole wanted it to? 24 A. Why didn't it happen? Mike never set it</p>
<p style="text-align: right;">Page 99</p> <p>1 harassing me. 2 Q. So you used the word harassment. Was 3 this a meeting to talk about sexual harassment, 4 Ms. Forsythe? 5 MR. GOODMAN: Objection. Calls for legal 6 conclusion. You can answer. 7 BY MS. KAPPELMAN: 8 Q. You can answer, Ms. Forsythe. 9 (Simultaneous crosstalk.) 10 BY MS. KAPPELMAN: 11 Q. Let me just -- you said aggressive 12 bullying, and I'm trying to understand if this 13 was about sexual harassment, this meeting on 14 April 19, 2019, you were talking about. 15 A. The meeting never happened so I can't 16 tell you what I would have said. 17 Q. I'm not asking you whether the meeting 18 happened. You talked to Mr. McDole about the 19 need for a meeting and he agreed that you needed 20 a meeting. Did you talk to him about the fact 21 that it was because he was sexually harassing? 22 A. I never talked to him about why I wanted 23 an HR meeting. 24 Q. Okay. And you've just told me it was</p>	<p style="text-align: right;">Page 101</p> <p>1 up. 2 Q. Really? Okay. 3 Do you recall telling McDole, "Before we 4 make ourselves look like children, since we can't 5 resolve our own issues, I'd like to work this out 6 without HR"? 7 A. Yes. 8 Q. So isn't that why the meeting never 9 occurred? Because you told him that you didn't 10 want to go to HR and make yourselves look like 11 children, in a text message? 12 A. I don't know why he didn't set it up. 13 You'd have to ask him. 14 Q. No. But I'm asking you. Didn't you say 15 to him, "Before we make ourselves look like 16 children" -- quote, we can't resolve issues. I'd 17 like to work this out without HR. 18 A. Did I say that? Yes, I said that. 19 Q. So you didn't want to go to HR either at 20 that point in April of 2019? 21 MR. GOODMAN: Objection. 22 Mischaracterizing evidence. 23 A. I wanted to go to HR. 24</p>

<p style="text-align: right;">Page 102</p> <p>1 BY MS. KAPPELMAN:</p> <p>2 Q. But you said to him, "Let's try to work</p> <p>3 this out without HR"; right?</p> <p>4 A. I did say that to him.</p> <p>5 Q. Why would you say that to him if you</p> <p>6 really wanted to go to HR?</p> <p>7 A. I didn't want to look bad at HR.</p> <p>8 Q. So he was supposed to read your mind?</p> <p>9 MR. GOODMAN: Argumentative.</p> <p>10 A. I cannot say.</p> <p>11 BY MS. KAPPELMAN:</p> <p>12 Q. What exactly were you going to say to HR</p> <p>13 even though you never did it?</p> <p>14 A. I can't tell you what I would have said.</p> <p>15 Q. Okay. So let's look at -- the same day</p> <p>16 that McDole and you decided you were going to</p> <p>17 speak with HR, on April 18th, did you reach out</p> <p>18 to a recruiter to stop the company from paying</p> <p>19 McDole's relocation fees? Do you recall that?</p> <p>20 Ms. Forsythe, do you recall that?</p> <p>21 A. I'm thinking. I don't know if they were</p> <p>22 relocation fees or if he was getting paid both</p> <p>23 out of California and Texas.</p> <p>24</p>	<p style="text-align: right;">Page 104</p> <p>1 bullying you, you're telling Stella Karadimas</p> <p>2 that you don't want to pay his relocation fees;</p> <p>3 right?</p> <p>4 A. Those two aren't related. It's a</p> <p>5 financial decision.</p> <p>6 Q. It's the same day. Who's bullying who</p> <p>7 here, Ms. Forsythe? The same day you say that</p> <p>8 he's bullying you, you're trying to take away his</p> <p>9 relocation fees, aren't you?</p> <p>10 MR. GOODMAN: Objection. Argumentative.</p> <p>11 BY MS. KAPPELMAN:</p> <p>12 Q. When you see this e-mail, does it refresh</p> <p>13 your recollection that you knew a Stella</p> <p>14 Karadimas enough to write to her about</p> <p>15 relocation?</p> <p>16 A. I did not know Stella.</p> <p>17 Q. So why were you writing to her on</p> <p>18 April 18, 2019?</p> <p>19 A. Because Mike was falsely taking money for</p> <p>20 a relocation he never did and that was affecting</p> <p>21 the company.</p> <p>22 Q. So he never moved to Perris, California?</p> <p>23 A. I don't know if he ever did. He might</p> <p>24 have.</p>
<p style="text-align: right;">Page 103</p> <p>1 (Exhibit No. 7 marked for</p> <p>2 identification.)</p> <p>3 BY MS. KAPPELMAN:</p> <p>4 Q. Okay. So who is Stella Karadimas, if you</p> <p>5 know?</p> <p>6 A. I don't know.</p> <p>7 Q. Well, you're writing an e-mail to her on</p> <p>8 April 18, 2019. Does this refresh your</p> <p>9 recollection that you know Stella Karadimas?</p> <p>10 A. I don't know her. She's just a -- I</p> <p>11 don't know who that is.</p> <p>12 Q. Okay. But do you see here that you wrote</p> <p>13 her on April 18th and you say:</p> <p>14 "With regard to Mike McDole, can you give</p> <p>15 me a call, please?"</p> <p>16 Was that your phone number, by the way?</p> <p>17 A. Yes. That was my phone number.</p> <p>18 Q. You say:</p> <p>19 "He never relocated and I don't want to</p> <p>20 pay him relo."</p> <p>21 Do you see that?</p> <p>22 A. I see that.</p> <p>23 Q. Okay. So the same day you're saying that</p> <p>24 you should call HR with Mr. McDole because he's</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. Okay. Got it.</p> <p>2 So in July, I guess -- were you still</p> <p>3 feeling that Mr. McDole was sexually harassing</p> <p>4 you in July of 2019?</p> <p>5 A. Yes.</p> <p>6 Q. So in July of 2019 do you remember having</p> <p>7 e-mails with Mr. McDole where you say you're</p> <p>8 looking forward to catching up with him?</p> <p>9 A. I think he said that to me.</p> <p>10 Q. Okay. And you say, if you're feeling --</p> <p>11 but you don't go on. You say:</p> <p>12 "Hi, Mike. Congrats on the promotion.</p> <p>13 We both know you're going to do a wonderful job</p> <p>14 in Perris. Just wanted to give you a heads-up</p> <p>15 that I will be on-site in Perris July 22nd to</p> <p>16 23rd. Thanks. Emily."</p> <p>17 Did I read that correctly?</p> <p>18 A. You read that correctly.</p> <p>19 Q. And this is the same guy you're writing</p> <p>20 to who you said has been sexually harassing you</p> <p>21 for seven months; right?</p> <p>22 MR. GOODMAN: Objection.</p> <p>23 Mischaracterizes evidence.</p> <p>24</p>

<p style="text-align: right;">Page 106</p> <p>1 BY MS. KAPPELMAN:</p> <p>2 Q. You can answer.</p> <p>3 A. It was seven months. Yes.</p> <p>4 Q. And you're saying congratulations on the</p> <p>5 promotion. We know you're going to do a</p> <p>6 wonderful job, and then you tell him you're going</p> <p>7 to be on-site. Why were you telling him that you</p> <p>8 were going to be on-site in July of 2019?</p> <p>9 A. I told every site director whenever I was</p> <p>10 traveling to a site.</p> <p>11 Q. Right. But every site director wasn't</p> <p>12 allegedly sexually harassing you in an unwelcome</p> <p>13 way; right?</p> <p>14 MR. GOODMAN: Objection.</p> <p>15 A. It was still the professional thing to do</p> <p>16 because any site director -- if I'm visiting the</p> <p>17 site, I tell them that I'm going to be there.</p> <p>18 BY MS. KAPPELMAN:</p> <p>19 Q. Did you tell every site director that you</p> <p>20 knew they were going to do a wonderful job where</p> <p>21 they were and congratulate them?</p> <p>22 MR. GOODMAN: Objection.</p> <p>23 A. If they got promoted into it I would,</p> <p>24 yes.</p>	<p style="text-align: right;">Page 108</p> <p>1 see that?</p> <p>2 A. Can I read the whole thing before we talk</p> <p>3 about it?</p> <p>4 Q. Well, you can read this e-mail. This is</p> <p>5 the one I'm asking about, if you recognize it,</p> <p>6 and then we'll go to other e-mails.</p> <p>7 A. Okay.</p> <p>8 Q. Do you recognize the 8/15/2019 e-mail at</p> <p>9 the top of this document that you sent to Matt</p> <p>10 Witte?</p> <p>11 A. I don't. I recognize that that -- like</p> <p>12 the August 14th "Hi Matt. Please don't share</p> <p>13 this" --</p> <p>14 Q. I'm not asking about that yet. I'm not</p> <p>15 asking about that yet. See, I'm asking about</p> <p>16 this one. You say that --</p> <p>17 A. I don't remember that.</p> <p>18 Q. -- in August of 2019, about Mr. McDole,</p> <p>19 the same person you say sexually harassed you,</p> <p>20 "He's good in person, just via e-mail he has an</p> <p>21 edge."</p> <p>22 Do you see that?</p> <p>23 A. I see that.</p> <p>24 Q. So that's what I'm trying to understand.</p>
<p style="text-align: right;">Page 107</p> <p>1 BY MS. KAPPELMAN:</p> <p>2 Q. At some point you sent a long document, a</p> <p>3 14-page document, to Mr. Witte purporting to</p> <p>4 memorialize all of your interactions with</p> <p>5 Mr. McDole. Do you remember that?</p> <p>6 A. I remember sending the document.</p> <p>7 Q. Okay. How did it come to be -- why did</p> <p>8 you send it to Mr. Witte? Let's start with that.</p> <p>9 A. I sent it to Mr. Witte because I felt</p> <p>10 unsafe at work and I was overwhelmed and I didn't</p> <p>11 know what to do.</p> <p>12 Q. Okay.</p> <p>13 MS. KAPPELMAN: Kim, do you know what</p> <p>14 number exhibit this is? I'm sorry. Or Emily,</p> <p>15 Emily Miller, is this 6 or 7?</p> <p>16 MS. MILLER: I have it as 8.</p> <p>17 (Exhibit No. 8 marked for</p> <p>18 identification.)</p> <p>19 BY MS. KAPPELMAN:</p> <p>20 Q. So directing your attention to what's</p> <p>21 been marked as Exhibit 8, Ms. Forsythe, I know</p> <p>22 you don't recognize a lot of the e-mails we've</p> <p>23 seen today, but how about this one? It's dated</p> <p>24 August 15, 2019, from you to Matt Witte. Do you</p>	<p style="text-align: right;">Page 109</p> <p>1 Why you would suggest that Mr. McDole is sexually</p> <p>2 harassing you for eight months now at this point,</p> <p>3 but what you say to your boss, Matt Witte, is</p> <p>4 he's good in person? Just via e-mail he has an</p> <p>5 edge.</p> <p>6 So which is it, Ms. Forsythe? Was he</p> <p>7 sexually harassing you for eight months in</p> <p>8 person, or was he good in person and he just had</p> <p>9 an edge via e-mail?</p> <p>10 MR. GOODMAN: Objection. Argumentative.</p> <p>11 BY MS. KAPPELMAN:</p> <p>12 Q. You can answer.</p> <p>13 A. I don't remember writing that e-mail.</p> <p>14 Q. Well, I'm not asking if you remember</p> <p>15 writing the e-mail. I'm asking which was it? As</p> <p>16 of August 2019 was Mike McDole good in person but</p> <p>17 had an edge over e-mail or, in fact, was he</p> <p>18 sexually harassing you in person? Which was</p> <p>19 true?</p> <p>20 A. I can't answer that question.</p> <p>21 Q. Why? You've got a sexual harassment</p> <p>22 complaint against Wayfair claiming Mike McDole</p> <p>23 had sexually harassed you for eight months. So I</p> <p>24 have a right to ask you which is true. Was he</p>

<p style="text-align: right;">Page 110</p> <p>1 good with you in person or did he sexually harass 2 you? 3 A. It was both. He was very bipolar. 4 Q. Well, you don't say that to your manager 5 here, Matt Witte, in August of 2019. You say 6 that he's good in person, but it's just via 7 e-mail that he has an edge; right? 8 A. That's what that says. 9 Q. In fact, Matt Witte asks you directly "Is 10 he bullying you in person or do you just feel it 11 over the e-mails," and that's your response. 12 What was Mr. Witte supposed to think your 13 concerns were when he got this e-mail in August 14 of 2019? 15 A. I don't know what he was supposed to 16 think. 17 Q. What did you want him to think when you 18 said he's good in person just via e-mail he has 19 an edge? What were you trying to convey there? 20 A. I needed help from Witte dealing with 21 McDole. 22 Q. Because he was bullying you by e-mail? 23 A. There was a lot of things. 24 Q. Why don't you say anything about the</p>	<p style="text-align: right;">Page 112</p> <p>1 Ms. Forsythe? 2 A. I said that. That's correct. 3 Q. And then you say: 4 "Was wondering if you had a chance to 5 talk to Mike about his professionalism, including 6 his aggression in e-mails. I'm also attaching a 7 summary of correspondence between me and Mike." 8 Do you see that? Is there anywhere in 9 there that you say to Mr. Witte that he's 10 touching you or there's unwelcome sexual 11 harassment? 12 A. In this little e-mail or in the 13 attachment? 14 Q. In this little cover e-mail about what 15 you want Witte to talk to Mike about. 16 A. I think aggression is sexual harassment 17 too. 18 Q. You think it is? 19 A. Yeah. 20 Q. So somebody can be aggressive and they're 21 always sexually harassing. Is that what you're 22 saying? 23 A. I'm not saying that. 24 Q. So before this, before August 24, 2019,</p>
<p style="text-align: right;">Page 111</p> <p>1 sexual harassment in this e-mail? 2 A. I was embarrassed. 3 Q. He asked specifically what it is you're 4 concerned about. 5 A. I was embarrassed by it. 6 Q. I see. 7 (Exhibit No. 9 marked for 8 identification.) 9 BY MS. KAPPELMAN: 10 Q. So here's what I'm going to do -- 11 August 14th. This is the e-mail where you send 12 your 14-page complaint to Matt Witte; right? 13 August 14, 2019; is that correct? 14 A. That's correct. 15 Q. And you say: 16 "Please don't share this with anyone or 17 forward to anyone." 18 So it wasn't your intent to have 19 Mr. Witte give this to HR or anybody else for 20 that matter; is that correct? 21 A. I don't know what my intent was. 22 Q. Well, you say, "Please don't share this 23 with anyone or forward it to anyone"; right? 24 Isn't that what you say in this e-mail,</p>	<p style="text-align: right;">Page 113</p> <p>1 had you complained to anyone at Wayfair that 2 Mike McDole was sexually harassing you? 3 A. No, I had not. 4 MS. KAPPELMAN: So I think this is a good 5 time to take a break because what I really want 6 Ms. Forsythe to do is read her 14-page complaint 7 that she attached. And so maybe we can e-mail 8 that to Ms. Forsythe, Emily Miller, because I am 9 not going to spend the deposition having her read 10 all 14 pages at once. 11 I'm going to have you focus on particular 12 entries. So why don't we take a break and 13 hopefully when we come back from lunch, 14 Ms. Forsythe will have read her 14-page 15 complaint. 16 How does that sound? 17 MR. GOODMAN: I will e-mail it to her. 18 It's in -- Emily Miller, is it Exhibit 11 in your 19 list? 20 MS. MILLER: That's correct. 21 MS. KAPPELMAN: All right. So let's take 22 a break, about 45 minutes. 23 THE VIDEOGRAPHER: The time is 11:53. 24 This is the end of Session No. 3 and we are off</p>

<p style="text-align: right;">Page 114</p> <p>1 the record.</p> <p>2 (Recess taken at 11:53 a.m.)</p> <p>3 (Deposition resumed at 12:39 p.m.)</p> <p>4 THE VIDEOGRAPHER: The time is 12.39.</p> <p>5 This is the beginning of Session No. 4, and we</p> <p>6 are now back on the record.</p> <p>7 BY MS. KAPPELMAN:</p> <p>8 Q. Ms. Forsythe, when we took a break for</p> <p>9 lunch, we were looking at an e-mail that you had</p> <p>10 sent to Mr. Witte dated August 4, 2019. Do you</p> <p>11 recall that?</p> <p>12 A. Yes.</p> <p>13 Q. And that e-mail -- that August 4, 2019,</p> <p>14 e-mail to Mr. Witte had a multi, multi-page</p> <p>15 attachment to it that I asked you to review</p> <p>16 during the break. Did you have an opportunity to</p> <p>17 review it?</p> <p>18 A. I did.</p> <p>19 Q. Okay. Do you have a hard copy or is it</p> <p>20 on a computer?</p> <p>21 A. I printed it out.</p> <p>22 Q. Perfect. Okay. That will make it</p> <p>23 easier.</p> <p>24 So first let's go back just so that we</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Okay. So if we could then turn to the</p> <p>2 document -- I think you said you printed it out</p> <p>3 and it's a multi-page document. It's got what we</p> <p>4 call Bates stamps on the bottom, which are</p> <p>5 numbers that we put on the document for</p> <p>6 identification, and starts Wayfair 000442 and</p> <p>7 goes all the way down to Wayfair 000555. Do you</p> <p>8 see that on your document?</p> <p>9 A. I don't have that bottom section.</p> <p>10 Q. Okay.</p> <p>11 A. Like the -- I don't have the numbers. It</p> <p>12 must have cut it off.</p> <p>13 Q. So you can basically confirm that if it</p> <p>14 started at Wayfair 442 and went to 455, it's</p> <p>15 basically a 12-page document, and each page has</p> <p>16 multiple entries with dates on them; is that</p> <p>17 correct?</p> <p>18 A. How many pages did you say it was?</p> <p>19 Q. 12 pages, I think. It goes from Wayfair</p> <p>20 44 -- 442 to 55. So I guess 13 pages.</p> <p>21 A. To 55 what?</p> <p>22 Q. To 55. 455. I mean, basically, it's at</p> <p>23 least 10 but less than 15 pages, and each page</p> <p>24 has multiple dates on them; right?</p>
<p style="text-align: right;">Page 115</p> <p>1 can ground ourselves on the e-mail to which it</p> <p>2 was attached, Exhibit 8, and let me just look at</p> <p>3 this for one minute.</p> <p>4 A. Also, just so you know, I think -- I</p> <p>5 don't think my page numbers are the same. So if</p> <p>6 you want to just give me, like, the date when</p> <p>7 you're referencing just because I --</p> <p>8 Q. Okay. We'll do that.</p> <p>9 So I want to just go back to the last</p> <p>10 document we were looking at to ground ourselves.</p> <p>11 So this August 14, 2019, e-mail to Matt Witte was</p> <p>12 the one that attached your multi-page complaint;</p> <p>13 is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And this -- when you said "Please don't</p> <p>16 share this with anyone or forward it to anyone,"</p> <p>17 it was this multi-page complaint that you were</p> <p>18 referencing; right?</p> <p>19 A. That's correct.</p> <p>20 Q. And you say in this, to Mr. Witte:</p> <p>21 "I'm also attaching a summary of</p> <p>22 correspondence between me and Mike."</p> <p>23 And that was Mike McDole; right?</p> <p>24 A. Correct.</p>	<p style="text-align: right;">Page 117</p> <p>1 A. It has multiple dates.</p> <p>2 Q. And you prepared this?</p> <p>3 A. I prepared that.</p> <p>4 Q. And you attached it to the e-mail that</p> <p>5 you sent to Mr. Witte on August 14, 2019; right?</p> <p>6 A. That's correct.</p> <p>7 Q. And this was your complaint about</p> <p>8 Mike McDole's behaviors; right?</p> <p>9 A. It was correspondence between me and</p> <p>10 Mike.</p> <p>11 Q. And you were asking Mr. Witte to</p> <p>12 intervene as a result of this -- right -- with</p> <p>13 Mike McDole.</p> <p>14 A. I don't think -- I would have to look at</p> <p>15 that e-mail I sent him.</p> <p>16 Q. Well, without looking at the e-mail, what</p> <p>17 were you asking Mr. Witte to do with this?</p> <p>18 A. I don't remember what I asked him to do</p> <p>19 with it.</p> <p>20 Q. Okay. When did you create it?</p> <p>21 A. I don't remember.</p> <p>22 Q. Okay. Well, it starts off -- purports to</p> <p>23 cover a period from September 15, 2018, to</p> <p>24 August 4, 2019, when you -- right before you sent</p>

<p style="text-align: right;">Page 118</p> <p>1 it. So, you know, you see the first entry says</p> <p>2 September 15, 2018? Do you see where I'm looking</p> <p>3 here at the top of the page?</p> <p>4 A. I do.</p> <p>5 Q. So it purports to cover a period starting</p> <p>6 September 15, 2018, and then if we go all the way</p> <p>7 to the last page, the last entry seems to be</p> <p>8 August 4, 2019. Will you agree with me?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. So did you take -- did you start</p> <p>11 creating this in September of 2018</p> <p>12 contemporaneous with the first entry, or did you</p> <p>13 start creating it sometime after that but before</p> <p>14 August 14th when you sent it?</p> <p>15 A. I can't remember when I started creating</p> <p>16 it.</p> <p>17 Q. Was it on the first day that's entered</p> <p>18 here, September 15th?</p> <p>19 A. I can't remember.</p> <p>20 Q. Well, how did you go about assigning</p> <p>21 dates to the particular events that occurred?</p> <p>22 How did you remember a year later what had</p> <p>23 happened on an exact date?</p> <p>24 A. When I made this document, I was looking</p>	<p style="text-align: right;">Page 120</p> <p>1 after that?</p> <p>2 A. I don't remember when I started creating</p> <p>3 it.</p> <p>4 Q. So you don't know if you had it in April</p> <p>5 '19?</p> <p>6 A. I have -- I don't know when I started</p> <p>7 creating it.</p> <p>8 Q. Did you keep it?</p> <p>9 A. I'm sorry. Say that again.</p> <p>10 Q. Was it on a laptop?</p> <p>11 A. Yes.</p> <p>12 Q. Was it on your work -- was it in your</p> <p>13 work system or was it on a personal system?</p> <p>14 A. I don't remember if it was, like, a</p> <p>15 Google Docs I made or something I made at home.</p> <p>16 I really don't remember.</p> <p>17 Q. When did you first meet with a lawyer in</p> <p>18 connection with this case?</p> <p>19 A. I first called Bob -- I would say it</p> <p>20 was -- I think it was in September 2019.</p> <p>21 Q. Okay. So you first called Bob after you</p> <p>22 delivered this to Witte in August '19; right?</p> <p>23 You already had this created by the time you</p> <p>24 called Bob.</p>
<p style="text-align: right;">Page 119</p> <p>1 at e-mails, notes, one-on-one correspondence, and</p> <p>2 text messages.</p> <p>3 Q. So did you make it in August of 2019, the</p> <p>4 month that you sent it, or was it made in a month</p> <p>5 prior to the month that you sent it to Mr. Witte?</p> <p>6 A. I can't remember.</p> <p>7 Q. Did you start making it before the first</p> <p>8 alleged sexual harassment incident in January of</p> <p>9 2019 or after?</p> <p>10 A. I can't remember when I started it.</p> <p>11 Q. Why did you start it?</p> <p>12 A. Why did I start it? I felt like I was in</p> <p>13 a really bad spot because of the harassment from</p> <p>14 McDole. I felt powerless. I felt like I didn't</p> <p>15 know what to do. I was exasperated. I was</p> <p>16 stressed.</p> <p>17 Q. Did you -- I can't see you. Did you</p> <p>18 finish your answer or are you still talking?</p> <p>19 A. I finished.</p> <p>20 Q. Okay. So I guess what I'm trying to</p> <p>21 figure out is had you started creating this</p> <p>22 record that we have here in front of us as</p> <p>23 Exhibit 9 when you talked about meeting with HR</p> <p>24 in April of 2019, or did you start creating it</p>	<p style="text-align: right;">Page 121</p> <p>1 A. I believe that is correct.</p> <p>2 Q. Okay. So in this multiple-page --</p> <p>3 whether it's 13, 14, however many pages --</p> <p>4 complaint about Mr. McDole -- you've had a chance</p> <p>5 to review it -- how many of these entries</p> <p>6 reference sexual -- unwelcome sexual harassment?</p> <p>7 Do you know?</p> <p>8 MR. GOODMAN: Objection. Best evidence.</p> <p>9 BY MS. KAPPELMAN:</p> <p>10 Q. You can answer.</p> <p>11 A. Can I count?</p> <p>12 Q. Sure. How's it going, Ms. Forsythe? Are</p> <p>13 you almost done?</p> <p>14 A. No. I'm sorry.</p> <p>15 Q. I think we took an hour so you could --</p> <p>16 or 45 minutes so you could read the document</p> <p>17 carefully.</p> <p>18 A. Is that a question?</p> <p>19 Q. Yeah. Are you re-reading the whole</p> <p>20 document again or --</p> <p>21 A. No. I'm just counting the instances.</p> <p>22 Q. I actually don't want to waste the whole</p> <p>23 day with you rereading your 14 pages again. So</p> <p>24 if you're not almost done, we'll go at this a</p>



<p style="text-align: right;">Page 122</p> <p>1 different way.</p> <p>2 A. Okay. I'm not almost done.</p> <p>3 Q. I thought that's why we took a lunch</p> <p>4 break. So you could do this already, but let's</p> <p>5 try something else.</p> <p>6 Can you flip to 1/22, the date January</p> <p>7 22nd?</p> <p>8 A. Okay.</p> <p>9 Q. It says:</p> <p>10 "Mike and I had an in-person meeting in</p> <p>11 Perris. Uncomfortable situation where Mike was</p> <p>12 sitting on one side of the table. I was sitting</p> <p>13 on the exact opposite." Blah-blah.</p> <p>14 "Mike scooted his chair around the entire</p> <p>15 table, moved right next to me. Our knees were</p> <p>16 touching. He put his hand on my leg. I put my</p> <p>17 chair back, put a space between us. I felt</p> <p>18 uncomfortable."</p> <p>19 Do you see that?</p> <p>20 A. I see that.</p> <p>21 Q. Okay. So that was one instance that you</p> <p>22 wrote down about unwelcome sexual harassment; is</p> <p>23 that right?</p> <p>24 A. Unwelcome physical sexual harassment.</p>	<p style="text-align: right;">Page 124</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. Did you tell Mr. McDole during</p> <p>3 that meeting that you felt uncomfortable or that</p> <p>4 it was unwelcome?</p> <p>5 A. I told him he needs to be more</p> <p>6 professional in his behavior.</p> <p>7 Q. I don't see that. Where is that in the</p> <p>8 notes?</p> <p>9 A. It's not in the notes.</p> <p>10 Q. Why didn't you put it down in the notes?</p> <p>11 MR. GOODMAN: Objection. Argumentative.</p> <p>12 BY MS. KAPPELMAN:</p> <p>13 Q. You can answer. Why didn't you put it</p> <p>14 down in the notes? You told him a lot of other</p> <p>15 things.</p> <p>16 You said, "I told him I didn't want him</p> <p>17 to be unhappy on the team. That I would talk to</p> <p>18 Genaro."</p> <p>19 You know, other things you told him. Why</p> <p>20 didn't you write down that you told him that he</p> <p>21 needed to be more professional?</p> <p>22 A. I was embarrassed about it.</p> <p>23 Q. Okay. Did you complain to anyone in</p> <p>24 March of that year about this particular incident</p>
<p style="text-align: right;">Page 123</p> <p>1 That's correct.</p> <p>2 Q. January 22nd. Did you say anything to</p> <p>3 Mr. McDole during that meeting to suggest that it</p> <p>4 was unwelcome physical sexual harassment?</p> <p>5 A. No.</p> <p>6 Q. Did you complain to anyone at Wayfair</p> <p>7 about it in January of 2018?</p> <p>8 A. No.</p> <p>9 Q. 2019. Thank you.</p> <p>10 Okay. So let's flip to the next page,</p> <p>11 March 13th. Do you see that?</p> <p>12 A. I do see that.</p> <p>13 Q. "Mike and I had another in-person meeting</p> <p>14 in Boston."</p> <p>15 And you go down the page and you say</p> <p>16 again, at the bottom of the page, "Mike moved his</p> <p>17 chair around the table and moved close to me so</p> <p>18 that our knees and legs were touching. I moved</p> <p>19 my chair back and created space between us."</p> <p>20 Do you see that?</p> <p>21 A. I see that.</p> <p>22 Q. Okay. Is that another instance of</p> <p>23 unwelcome sexual -- physical sexual harassment</p> <p>24 that you're citing to?</p>	<p style="text-align: right;">Page 125</p> <p>1 of unwelcome sexual harassment?</p> <p>2 A. Anyone at Wayfair?</p> <p>3 Q. Yes.</p> <p>4 A. No one at Wayfair.</p> <p>5 Q. Now, during this period, both January and</p> <p>6 March, these two instances we've looked at, you</p> <p>7 were Mike McDole's manager; right? He reported</p> <p>8 to you.</p> <p>9 A. That is correct.</p> <p>10 Q. Okay. Did you issue him any warnings or</p> <p>11 did you prepare any evaluations about this</p> <p>12 behavior?</p> <p>13 A. About the sexual physical --</p> <p>14 (Simultaneous crosstalk.)</p> <p>15 BY MS. KAPPELMAN:</p> <p>16 Q. The January and the March incidents where</p> <p>17 he sat too close to you.</p> <p>18 A. I did not.</p> <p>19 Q. Okay. Did you reach out to HR and ask</p> <p>20 them to intervene?</p> <p>21 A. I did not.</p> <p>22 Q. Okay. So now I'm really -- I'm flipping</p> <p>23 a number of pages all the way to 7/22. It's an</p> <p>24 entry that says "7/22. On-site visit in Perris."</p>

<p style="text-align: right;">Page 126</p> <p>1 And on my document it's Wayfair 000454.</p> <p>2 Can you tell me when you're at that entry?</p> <p>3 A. I am at that entry.</p> <p>4 Q. Okay. In that entry you were having</p> <p>5 lunch at a small table near human resources at</p> <p>6 the Perris, California, site; is that correct?</p> <p>7 A. That is correct.</p> <p>8 Q. You say:</p> <p>9 "Mike came over and sat down next to me.</p> <p>10 I moved my lunch aside and turned to talk to him.</p> <p>11 I was wearing a shirt with little spots all over</p> <p>12 it and it had buttons running up the front in the</p> <p>13 middle."</p> <p>14 Do you see where I'm reading?</p> <p>15 A. I see where you're reading.</p> <p>16 Q. "Mike was staring at the buttons or a</p> <p>17 spot. I asked him what was wrong, if I'd spilled</p> <p>18 something on my shirt. He was looking very</p> <p>19 closely at it. He reached down and touched my</p> <p>20 buttons and a spot that was part of the shirt.</p> <p>21 He said he couldn't tell if it was a spot or</p> <p>22 lunch. I laughed it off."</p> <p>23 Do you see that?</p> <p>24 A. I see that.</p>	<p style="text-align: right;">Page 128</p> <p>1 A. I did not tell him that.</p> <p>2 Q. Did you tell him you were uncomfortable?</p> <p>3 A. I did not tell him that I was</p> <p>4 uncomfortable.</p> <p>5 Q. Complain to anyone in HR in July --</p> <p>6 around July 22nd, before you wrote this to</p> <p>7 Mr. Witte in August, about this incident?</p> <p>8 A. Sorry. Can you say that again?</p> <p>9 Q. Yeah. Did you complain to anyone about</p> <p>10 this July incident before you sent the</p> <p>11 August 14th e-mail to Mike Witte?</p> <p>12 A. Anyone at Wayfair or anyone outside of</p> <p>13 Wayfair?</p> <p>14 Q. Anyone at Wayfair.</p> <p>15 A. I did not complain to anyone at Wayfair</p> <p>16 about this incident.</p> <p>17 Q. So those are the three incidents of</p> <p>18 physical touching that I found in this 13-,</p> <p>19 14-page complaint. Is there something else I'm</p> <p>20 missing? Was there some other complaint about</p> <p>21 physical touching by McDole that I missed when I</p> <p>22 went through this document looking for it?</p> <p>23 MR. GOODMAN: Objection to the question.</p> <p>24</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Is that a third incident of unwelcome</p> <p>2 physical touching that you refer to in this</p> <p>3 complaint?</p> <p>4 A. That is correct.</p> <p>5 Q. And it's fair to say that this third</p> <p>6 incident on July 22nd, Mr. McDole was not</p> <p>7 reporting to you anymore. Correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Who was he reporting to?</p> <p>10 A. He was --</p> <p>11 Q. Was it Genaro?</p> <p>12 A. I can't -- I don't know when Genaro</p> <p>13 was -- when Genaro left.</p> <p>14 Q. Either way, did you complain to</p> <p>15 Mr. McDole or tell him that you were</p> <p>16 uncomfortable about what happened? You say here</p> <p>17 that you laughed it off. Did you actually tell</p> <p>18 him he made you uncomfortable and it was</p> <p>19 unwelcome?</p> <p>20 A. That physical contact was unwelcome?</p> <p>21 Q. That's the question.</p> <p>22 On July 22nd when you say you laughed it</p> <p>23 off, did you actually tell Mr. McDole that it was</p> <p>24 unwelcome?</p>	<p style="text-align: right;">Page 129</p> <p>1 BY MS. KAPPELMAN:</p> <p>2 Q. You can answer.</p> <p>3 A. About physical touching?</p> <p>4 Q. Yes. Unwelcome physical touching.</p> <p>5 A. I don't believe so.</p> <p>6 Q. Okay. So you send this document. Where</p> <p>7 were you when you sent it, by the way, to</p> <p>8 Mike Witte?</p> <p>9 A. I can't remember.</p> <p>10 Q. Where was Mike Witte when you sent it to</p> <p>11 him?</p> <p>12 A. Matt Witte?</p> <p>13 Q. Matt Witte. I'm sorry. Where was he</p> <p>14 when you sent it to him?</p> <p>15 A. He was either in Kentucky or the U.K.</p> <p>16 Q. Was he overseas? Do you remember if he</p> <p>17 was overseas in Germany when you sent this to</p> <p>18 him?</p> <p>19 A. I can't remember when he left.</p> <p>20 Q. And what did Mr. Witte do after he</p> <p>21 received this 14-page complaint from you?</p> <p>22 A. What's the time frame?</p> <p>23 Q. In August, after he received it, did</p> <p>24 anything happen as a result of it? How's that?</p>

<p style="text-align: right;">Page 130</p> <p>1 A. Yes. He sent it to HR.</p> <p>2 Q. And did somebody from HR reach out to</p> <p>3 you?</p> <p>4 A. He -- sorry. He told me he sent it to</p> <p>5 HR. I'm assuming he sent it to HR because</p> <p>6 someone from HR reached out to me.</p> <p>7 Q. Bear with me one moment. Let's look at</p> <p>8 one more document.</p> <p>9 (Exhibit No. 10 marked for</p> <p>10 identification.)</p> <p>11 BY MS. KAPPELMAN:</p> <p>12 Q. Did you ever tell Mr. Witte that you were</p> <p>13 happy with the response from HR to your</p> <p>14 complaint?</p> <p>15 A. I don't remember.</p> <p>16 Q. All right. Let's look at this exhibit,</p> <p>17 which I believe is Exhibit 10. Everybody will</p> <p>18 correct me if I'm wrong. It's an e-mail from</p> <p>19 you. Subject: HR engagement, to Matt Witte.</p> <p>20 Does this refresh your recollection that you</p> <p>21 reached out to Matt on August 22nd, thanking him</p> <p>22 for addressing your HR issue so promptly?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So you were grateful that Matt</p>	<p style="text-align: right;">Page 132</p> <p>1 A. That is correct.</p> <p>2 Q. Okay. So I think you said somebody from</p> <p>3 HR reached out to you. Who from HR reached out</p> <p>4 to you?</p> <p>5 A. I can't remember if Trevor was the first</p> <p>6 person, but Trevor is the only person that comes</p> <p>7 to mind.</p> <p>8 Q. And what did -- when did Trevor reach out</p> <p>9 to you? How soon after you sent this e-mail, if</p> <p>10 you know?</p> <p>11 A. Within a week or two.</p> <p>12 Q. Okay. And did Trevor ask you what</p> <p>13 happened between you and McDole?</p> <p>14 A. Trevor asked me to explain the situation</p> <p>15 and what was going on.</p> <p>16 Q. And is it fair to say that you told</p> <p>17 Trevor that you thought McDole was sexually</p> <p>18 harassing you?</p> <p>19 A. Yes.</p> <p>20 Q. Is it fair to say that Trevor asked you</p> <p>21 about any prior contact you had with McDole</p> <p>22 before coming to Wayfair?</p> <p>23 A. I don't remember that.</p> <p>24 Q. Well, did you tell Trevor that you had</p>
<p style="text-align: right;">Page 131</p> <p>1 sent along your HR issues promptly and</p> <p>2 professionally; right?</p> <p>3 A. I don't know if I was grateful, but I</p> <p>4 said thank you.</p> <p>5 Q. Well, you say "I really appreciate."</p> <p>6 So you really appreciated that once you</p> <p>7 disclosed the issues to Matt, he immediately</p> <p>8 addressed them. Did I read that correctly?</p> <p>9 A. You did.</p> <p>10 Q. And you said you appreciated his support;</p> <p>11 right?</p> <p>12 A. I said I appreciate his support.</p> <p>13 Q. Right. So you felt as though Matt</p> <p>14 addressed your HR concerns with Mr. McDole</p> <p>15 promptly and immediately addressed them and sent</p> <p>16 them to HR; right?</p> <p>17 A. No. I didn't say that.</p> <p>18 Q. Well, you say, "Thank you for addressing</p> <p>19 my HR issues so promptly and professionally."</p> <p>20 What part did I read wrong there?</p> <p>21 A. That's not what you said.</p> <p>22 Q. Okay. So you were thanking him for</p> <p>23 addressing your HR issues promptly and</p> <p>24 professionally; right?</p>	<p style="text-align: right;">Page 133</p> <p>1 worked with McDole at Amazon?</p> <p>2 A. I don't remember if I told him that.</p> <p>3 Q. Well, wouldn't that be relevant? That</p> <p>4 you knew him before you came to Wayfair?</p> <p>5 A. I just don't remember if I said it or</p> <p>6 not.</p> <p>7 Q. Do you remember whether you told Trevor</p> <p>8 that you had had -- you had invited McDole to</p> <p>9 your parents' house for two or three days in</p> <p>10 Cohasset and you guys had consensual kissing?</p> <p>11 A. I did not tell Trevor that.</p> <p>12 Q. Why wouldn't you have told Trevor that as</p> <p>13 part of your story about McDole sexually</p> <p>14 harassing you?</p> <p>15 THE WITNESS: Bob, you're muted.</p> <p>16 MR. GOODMAN: Same objection.</p> <p>17 BY MS. KAPPELMAN:</p> <p>18 Q. You can answer. Why wouldn't you have</p> <p>19 told Trevor Shaffer-Figueroa that you and</p> <p>20 Mr. McDole had had a kissing interlude at your</p> <p>21 parents' house in Cohasset before you recruited</p> <p>22 him to Wayfair?</p> <p>23 A. I was embarrassed about it.</p> <p>24 Q. Okay. But you weren't embarrassed about</p>

<p style="text-align: right;">Page 134</p> <p>1 bringing a sexual harassment complaint against  2 your colleague; right? You knew that would have  3 ramifications against him, didn't you?  4 A. That wasn't a factor in my decision.  5 Q. So Mr. McKnight, was he your manager yet  6 when you made this complaint to Mr. Witte?  7 A. I don't believe so.  8 Q. So was Mr. McKnight involved at all? Was  9 he interviewed as part of your investigation?  10 A. You would have to ask him. I don't know.  11 Q. Did Trevor circle back to you and tell  12 you what he did for his investigation?  13 A. He told me parts of it.  14 Q. Okay. So did he tell you he interviewed  15 McKnight? Did you ask him to interview McKnight?  16 A. Which question do you want me to answer?  17 Q. Did you ask him to interview McKnight as  18 part of your investigation about Mr. McDole's  19 sexual harassment? Did you say, "Please  20 interview Kory McKnight"?  21 A. Did I ask Trevor that?  22 Q. Yeah.  23 A. No. I did not ask Trevor to interview  24 McKnight.</p>	<p style="text-align: right;">Page 136</p> <p>1 to your sexual harassment complaint against  2 Michael McDole?  3 MR. GOODMAN: Objection. Calls for a  4 legal conclusion. You can answer.  5 A. I don't remember.  6 MS. KAPPELMAN: So I just asked her what  7 she told Trevor.  8 BY MS. KAPPELMAN:  9 Q. Were there any other incidents of sexual  10 harassment, other than the three that you pointed  11 out in your complaint to Matt, which is Exhibit  12 9?  13 MR. GOODMAN: Same objection. You can  14 answer.  15 BY MS. KAPPELMAN:  16 Q. You can answer, Ms. Forsythe.  17 A. I also brought up the bullying and his  18 aggressive behavior. I thought it was mental  19 sexual harassment. It was incredibly --  20 Q. I'm sorry. I'm going to stop you there.  21 Did you say "mental sexual harassment"?  22 A. Yes.  23 Q. Okay. Go ahead.  24 A. That's the end.</p>
<p style="text-align: right;">Page 135</p> <p>1 Q. Did Trevor say to you, "Who are the  2 people with relevant knowledge about this issue  3 that I should interview"?  4 A. I don't remember what Trevor said  5 specifically.  6 Q. Well, did he give you an opportunity to  7 suggest people who might have witnessed the  8 issues you complained about?  9 A. He did.  10 Q. And did you suggest Mr. McKnight as one  11 of the people that might have witnessed them?  12 A. I did not.  13 Q. Because Mr. McKnight wasn't your manager  14 yet; right?  15 A. I would have to check.  16 Q. Okay. So when you talked to Trevor  17 Shaffer-Figueroa about your complaints of sexual  18 harassment, did you give him any more information  19 other than the three complaints that we just went  20 through that were contained in that 14-page  21 document, Exhibit 9? One was January, one was  22 March, and one was July.  23 Were there any other incidents that you  24 told Trevor Shaffer-Figueroa about that gave rise</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Okay.  2 A. I'm done.  3 Q. So you brought up his aggressive  4 behavior -- this is to Trevor -- because you  5 thought it was mental sexual harassment; is that  6 correct?  7 A. It was very dominant, aggressive  8 behavior.  9 Q. Yeah. Okay.  10 And was this during the period between  11 April 1, 2019, when he wasn't reporting to you  12 and you were only in the same physical space  13 between once a week and once every two months?  14 A. Can you repeat that question?  15 Q. Sure. I think we talked about how often  16 you and Mr. McDole were in the same physical  17 space after he stopped reporting to you in  18 April 2019. Do you remember that testimony this  19 morning?  20 A. After he stopped reporting to me, yes.  21 Q. And you said after he stopped reporting  22 to you, you two were only in the same physical  23 location more than once a week but less than once  24 every two months. Did I get that right?</p>

<p style="text-align: right;">Page 138</p> <p>1 A. It ranged.</p> <p>2 Q. Okay. So tell me how often you and</p> <p>3 Mr. McDole were in the same physical location</p> <p>4 after he stopped reporting to you April 1, 2019.</p> <p>5 A. I'd have to look back and look at, like,</p> <p>6 my travel log and stuff like that. Like, when</p> <p>7 I was --</p> <p>8 Q. You can imagine. Like, it wasn't every</p> <p>9 day; right? Is that right?</p> <p>10 A. I can't imagine. I'd need to look.</p> <p>11 Q. It wasn't every day. That's easy; right?</p> <p>12 You can answer that question.</p> <p>13 A. What was the question?</p> <p>14 Q. Were you in the same physical location</p> <p>15 with Mr. McDole every day after he stopped</p> <p>16 reporting to you April 1, 2019?</p> <p>17 A. I was not.</p> <p>18 Q. Were you in the same physical location</p> <p>19 with him every week after he stopped reporting to</p> <p>20 you April 1, 2019?</p> <p>21 A. I'd have to check how much I was out in</p> <p>22 Texas or California.</p> <p>23 Q. So you think it's possible you saw him</p> <p>24 once a week after April 1, 2019, as you sit here</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. Well, July is not a week. It's a month.</p> <p>2 A. The whole month? I'd have to look. Do</p> <p>3 you mind if I check my Delta flight records?</p> <p>4 Q. You know what? I think we're good with</p> <p>5 that answer that you don't know. You're in</p> <p>6 charge of 13 and you just can't tell me the</p> <p>7 answers. I'm pretty good with that answer so</p> <p>8 far. No worries.</p> <p>9 Let's go on to the next set of questions.</p> <p>10 Do you remember filing a complaint against</p> <p>11 Wayfair in the United States District Court for</p> <p>12 the District of Massachusetts, the case in which</p> <p>13 we are currently having a deposition,</p> <p>14 Ms. Forsythe?</p> <p>15 A. I remember Bob filed it.</p> <p>16 Q. Yeah. But he filed it on your behalf and</p> <p>17 you had -- did you have a chance to review it for</p> <p>18 accuracy before it was filed?</p> <p>19 A. I did.</p> <p>20 Q. Okay. And everything was true and</p> <p>21 correct to the best of your knowledge before you</p> <p>22 filed it in the federal court; right?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay. And let's just look at paragraph 9</p>
<p style="text-align: right;">Page 139</p> <p>1 today, telling the truth under oath?</p> <p>2 A. I'd have to check.</p> <p>3 Q. Yeah. You just don't remember what it</p> <p>4 was last year this time. How often you were</p> <p>5 traveling to Perris, California?</p> <p>6 A. Is that a question?</p> <p>7 Q. Let's put it this way, Ms. Forsythe: How</p> <p>8 many locations were you responsible for when you</p> <p>9 were in your job last year in July of 2019?</p> <p>10 A. Let me write it down. 13. About 13.</p> <p>11 Q. All right. So you're responsible for 13</p> <p>12 locations and you can't tell me whether or not</p> <p>13 you were in Perris, California, once a week</p> <p>14 during this period of time last year? In July of</p> <p>15 2019.</p> <p>16 A. What's the period of time? Is it just</p> <p>17 July or --</p> <p>18 Q. Let's talk about July. That's a good</p> <p>19 time.</p> <p>20 A. Okay.</p> <p>21 Q. In July 2019, last year this time, would</p> <p>22 you have been in Perris, California, in the same</p> <p>23 physical location as Mr. McDole once a week?</p> <p>24 A. That one week?</p>	<p style="text-align: right;">Page 141</p> <p>1 of your complaint. You say that Mr. McDole asked</p> <p>2 you to dinner without any pretense of the</p> <p>3 invitation being work-related, and you said you</p> <p>4 would meet with him only for a work-related meal</p> <p>5 and then he didn't pursue the invitation. Do you</p> <p>6 see that allegation?</p> <p>7 A. Can I just read that No. 9?</p> <p>8 Q. Please. Go ahead.</p> <p>9 A. I have finished reading that.</p> <p>10 Q. Isn't it true, ma'am, that you invited</p> <p>11 Mr. McDole to dinner that day?</p> <p>12 A. What day?</p> <p>13 Q. March 14, 2019. In March you invited him</p> <p>14 to dinner.</p> <p>15 A. I don't remember that.</p> <p>16 Q. Well, you remembered it enough to make</p> <p>17 the allegation in your complaint that he invited</p> <p>18 you to dinner and it was not something that was</p> <p>19 welcome with you. Do you remember that?</p> <p>20 A. I'm not sure about the dates. I might</p> <p>21 have that confused.</p> <p>22 Q. Okay. Well, let's take a look at this.</p> <p>23 MS. KAPPELMAN: Is this Exhibit --</p> <p>24 Emily -- 10? Emily Miller.</p>

<p style="text-align: right;">Page 142</p> <p>1 MS. MILLER: I have it as 11.  2 (Exhibit No. 11 marked for  3 identification.)  4 BY MS. KAPPELMAN:  5 Q. Ms. Forsythe, is this an e-mail to you --  6 from you to Michael McDole, the alleged sexual  7 harasser, dated March 14, 2019, that same day  8 that you said he was inviting you to a dinner  9 that you declined?  10 A. I just see a message. I don't see an  11 e-mail. I just see the header. I don't see an  12 e-mail.  13 Q. I'm not asking you that. This is from  14 you to Michael McDole and the subject is dinner  15 and drinks; right?  16 A. That is what that says.  17 Q. Okay. And are you suggesting that there  18 was some other e-mail in there that you sent to  19 Mr. McDole about dinner and drinks?  20 A. Is this an e-mail --  21 MR. GOODMAN: Objection. Assumes facts  22 not in evidence.  23 MS. KAPPELMAN: It's not assuming any  24 facts not in evidence.</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Okay. How about the week before? Did  2 you send him an e-mail about an event at Harpoon  3 Brewery?  4 MS. KAPPELMAN: Let's introduce this as  5 Exhibit 12.  6 (Exhibit No. 12 1marked for  7 identification.)  8 BY MS. KAPPELMAN:  9 Q. On March 7th, the week before you claim  10 Mr. McDole was trying to take you out for some  11 event personally that you didn't want to go out  12 on, didn't you send him this e-mail suggesting  13 that the two of you attend a Harpoon Brewery  14 event?  15 A. That's not accurate.  16 MR. GOODMAN: Objection. Assumes facts  17 not in evidence.  18 Counsel, you're using -- assumes facts  19 not in evidence.  20 BY MS. KAPPELMAN:  21 Q. Ms. Forsythe, why don't you tell me what  22 this e-mail is on March 7, 2019, from you to  23 Michael McDole sending him information about a  24 Harpoon Brewery event.</p>
<p style="text-align: right;">Page 143</p> <p>1 BY MS. KAPPELMAN:  2 Q. If I were to tell you that there's no  3 other entry on this, there's no other facts on  4 this, it's just you writing to Michael McDole  5 about dinner and drinks, would that refresh your  6 recollection that you were the one that asked him  7 to dinner and drinks on March 14th?  8 MR. GOODMAN: Objection. Harassing.  9 Counsel, there may have been another way  10 they made the invitation other than by Skype or  11 e-mail.  12 BY MS. KAPPELMAN:  13 Q. I'm just asking you: Why did you write  14 to Michael McDole on March 14th with a header  15 "Dinner and drinks"?  16 A. What's the e-mail? I'm not sure what I  17 wrote here.  18 Q. You didn't write anything. You just  19 wrote "Dinner and drinks." Does that refresh  20 your recollection that you were the one that  21 actually invited him for dinner and drinks on  22 March 14th? And it's not, as you said, in the  23 complaint.  24 A. That's not accurate.</p>	<p style="text-align: right;">Page 145</p> <p>1 A. It looks like I sent him information  2 about a Harpoon Brewery event.  3 Q. And this is the same person who you said  4 was asking you to do things personally in an  5 uncomfortable, unwelcome way. Why were you  6 pursuing him, sending him information about  7 social events if he's the one that is pursuing  8 you in an uninvited, unwelcome way?  9 MR. GOODMAN: Objection. Assumes facts  10 not in evidence.  11 BY MS. KAPPELMAN:  12 Q. You can answer, Ms. Forsythe.  13 A. Can you say the question again?  14 Q. Yeah. The same person who you filed a  15 federal complaint saying he was harassing you by  16 asking you out to dinner in March 2019, you're  17 sending him information about events at Harpoon  18 Brewery the week before. Can you explain that to  19 us?  20 A. I might have sent him an event for him to  21 go to without me. He was probably looking for  22 activities to do in Boston and I sent him that.  23 I was not living in Boston at the time, and I  24 wouldn't have gone with him.</p>

<p style="text-align: right;">Page 146</p> <p>1 Q. Well, why were you sending this to him at 2 all? If he is approaching you in an unwelcome 3 way about personal issues and going out to 4 dinner, why would you send him this information 5 at all?</p> <p>6 A. He might have asked for it. I can't 7 recall.</p> <p>8 Q. Okay. Let's go back to your complaint 9 for a moment that you filed in federal court. 10 Let me just grab that.</p> <p>11 Let's look at paragraph 13. This is the 12 event that we just talked about which was -- 13 occurred on July 22, 2019, in your complaint 14 which you filed with the federal court.</p> <p>15 You talk about this event and you say 16 that Mr. McDole stared at your breasts, ran his 17 right hand down your blouse, beginning above your 18 cleavage, and moving toward her waist. When she 19 moved away from him to avoid further contact, he 20 laughed and got up and walked away.</p> <p>21 That's a little bit different than you 22 described it with Mr. Witte; right? Remember we 23 talked about the polka-dotted shirt, touching the 24 polka-dot, laughing it off. That's not what you</p>	<p style="text-align: right;">Page 148</p> <p>1 BY MS. KAPPELMAN:</p> <p>2 Q. Well, when you say "less detailed" -- 3 what you said to him was you were wearing a 4 polka-dotted shirt. McDole touched it and said, 5 "Is that a spot or is that your lunch," and then 6 you laughed it off.</p> <p>7 Here Mr. McDole is touching your breasts 8 and running his right hand down your blouse, 9 beginning at your cleavage and moving toward your 10 waist. There's no conversation about lunch, 11 about polka-dots, or about touching you in one 12 spot.</p> <p>13 So it's a different discussion and I'm 14 wondering why that is. Why you would tell the 15 court one thing and Mr. Witte another thing?</p> <p>16 MR. GOODMAN: Counsel, it's my complaint. 17 It's not -- she didn't draft it.</p> <p>18 MS. KAPPELMAN: She reviewed it for 19 accuracy. She told --</p> <p>20 BY MS. KAPPELMAN:</p> <p>21 Q. Is it not correct? Is this paragraph 13, 22 that your lawyer filed with the federal court, 23 incorrect, ma'am?</p> <p>24 A. That is not incorrect.</p>
<p style="text-align: right;">Page 147</p> <p>1 wrote here in your complaint in the federal 2 court, is it?</p> <p>3 MR. GOODMAN: Objection. Argumentative. 4 Best evidence.</p> <p>5 BY MS. KAPPELMAN:</p> <p>6 Q. You can answer, Ms. Forsythe. Why is it 7 different?</p> <p>8 A. It's not different. They're just 9 different descriptions.</p> <p>10 Q. Okay. But you would agree with me that 11 touching a polka-dot on a shirt is different than 12 running his right hand down her blouse beginning 13 above her cleavage and moving toward her waist.</p> <p>14 Why is it that you told the federal court 15 something different than you told Matt Witte?</p> <p>16 MR. GOODMAN: Objection. Assumes facts 17 not in evidence.</p> <p>18 BY MS. KAPPELMAN:</p> <p>19 Q. You can answer, Ms. Forsythe.</p> <p>20 MR. GOODMAN: To the best of your 21 ability, Ms. Forsythe.</p> <p>22 A. I told the truth in both situations. I 23 was less detailed with Matt Witte because he was 24 my boss and I was incredibly embarrassed.</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. Okay. So was it incorrect when you said 2 to Mr. Witte that all Mr. McDole had done was 3 touch a polka-dot on your shirt and ask if it was 4 a spot or lunch?</p> <p>5 A. I'd have to re-read what I said.</p> <p>6 MR. GOODMAN: Objection.</p> <p>7 BY MS. KAPPELMAN:</p> <p>8 Q. You have to re-read it? We just read it 9 five minutes ago.</p> <p>10 A. I'd have to re-read it.</p> <p>11 Q. Okay. If that's your answer, I'll stick 12 with it. I like it.</p> <p>13 A. It's the same story.</p> <p>14 Q. That same paragraph of your complaint to 15 the federal court you said something about -- 16 McDole said something about the possibility of 17 you two dating and inviting you to dinner. Do 18 you see there?</p> <p>19 "McDole began to discuss internet dating 20 applications, speculated about the possibility of 21 him and Plaintiff dating, even while 22 acknowledging his conflicts with Plaintiff and 23 invited Plaintiff to spend the afternoon and go 24 to dinner with him."</p>

<p style="text-align: right;">Page 150</p> <p>1 Do you see that?</p> <p>2 A. I see that.</p> <p>3 Q. I didn't see that at all in your notes to</p> <p>4 Mr. Witte on August 14th. Did you just remember</p> <p>5 that as you were drafting the federal complaint?</p> <p>6 A. No. I did not just remember that.</p> <p>7 Q. Okay. At this point in time in July 2019</p> <p>8 Mr. McDole didn't report to you; right?</p> <p>9 A. That's correct.</p> <p>10 Q. And he was living and working in</p> <p>11 California; right?</p> <p>12 A. I don't know if he was living there.</p> <p>13 Q. You don't know if he was living in</p> <p>14 California? Is that what you just said?</p> <p>15 A. That's correct.</p> <p>16 Q. You were living and working in Kentucky;</p> <p>17 right?</p> <p>18 A. And Boston.</p> <p>19 Q. Right. Was he living in Kentucky or</p> <p>20 Boston at the time?</p> <p>21 A. No.</p> <p>22 Q. Okay. Is there a company policy</p> <p>23 prohibiting employees from dating each other? Do</p> <p>24 you know?</p>	<p style="text-align: right;">Page 152</p> <p>1 You just said part of it was official and</p> <p>2 unofficial. So which is true? When you say on</p> <p>3 August 5, 2019 -- in paragraph 15:</p> <p>4 "On August 5, 2019, Plaintiff was</p> <p>5 reassigned to the direct supervision of</p> <p>6 Kory McKnight instead of Witte, who became</p> <p>7 McKnight's immediate supervisor."</p> <p>8 Is that true? Can we rely on that</p> <p>9 statement?</p> <p>10 A. I'm not sure how to answer that.</p> <p>11 Q. What's confusing about that,</p> <p>12 Ms. Forsythe? It's your statement and your</p> <p>13 complaint against Wayfair. So what's confusing</p> <p>14 about your own statement?</p> <p>15 A. Are you asking if in the ordinary course</p> <p>16 at Wayfair I was 100 percent reporting to</p> <p>17 McKnight or if Matt --</p> <p>18 Q. I'm asking if your statement in the</p> <p>19 federal court complaint against Wayfair, in</p> <p>20 paragraph 15, the first sentence, is true?</p> <p>21 MR. GOODMAN: Objection.</p> <p>22 A. Matt had reassigned me on</p> <p>23 August 5th to Kory McKnight.</p> <p>24 BY MS. KAPPELMAN:</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I don't know.</p> <p>2 Q. Okay. At this point when Plaintiff asked</p> <p>3 you if you wanted to date, did you tell him that</p> <p>4 his conduct made you feel uncomfortable and</p> <p>5 unwelcome in July of 2019?</p> <p>6 A. Am I the plaintiff or is McDole?</p> <p>7 Q. You're the plaintiff. You're the one</p> <p>8 that sued Wayfair.</p> <p>9 A. Yeah. You just said when I asked the</p> <p>10 plaintiff, and I didn't ask the plaintiff.</p> <p>11 Q. When you asked McDole -- when McDole</p> <p>12 asked you, the plaintiff, if you wanted to date</p> <p>13 or go to dinner with him and you refused, did you</p> <p>14 tell him it was unwelcome and you felt</p> <p>15 uncomfortable in July of 2019?</p> <p>16 A. No.</p> <p>17 Q. So let's look at paragraph 15 just for a</p> <p>18 minute. In paragraph 15 you say Kory McKnight</p> <p>19 became your supervisor on August 5, 2019. Does</p> <p>20 that refresh your recollection as to when</p> <p>21 Mr. McKnight became your supervisor?</p> <p>22 A. Kind of. Part of it was, like, official</p> <p>23 and unofficial.</p> <p>24 Q. Just one second. I'm sorry.</p>	<p style="text-align: right;">Page 153</p> <p>1 Q. Thank you. And when did you learn that</p> <p>2 Kory McKnight was joining the team?</p> <p>3 A. I don't remember.</p> <p>4 Q. And what was Mr. McKnight's new position?</p> <p>5 A. A director.</p> <p>6 Q. And where was Mr. McKnight going to be</p> <p>7 geographically located?</p> <p>8 A. He -- I'm not sure at that time. I know</p> <p>9 where he was living, but I don't know if he was</p> <p>10 being asked to relocate.</p> <p>11 Q. Where was he living at that time, ma'am?</p> <p>12 A. He told me he was living in Chicago.</p> <p>13 Q. And how often did you and Mr. McKnight</p> <p>14 interact in person during that first month of</p> <p>15 August 2019?</p> <p>16 A. I believe it was one time.</p> <p>17 Q. And did Mr. McKnight approach you on your</p> <p>18 performance and your communication issues during</p> <p>19 that first month of August 2019?</p> <p>20 A. In what context?</p> <p>21 Q. In any context. Did he tell you that you</p> <p>22 were having problems with communications and had</p> <p>23 room for improvement and that other people were</p> <p>24 complaining about you?</p>



<p style="text-align: right;">Page 154</p> <p>1 A. Which question are you asking me? Those</p> <p>2 are two questions.</p> <p>3 Q. Whichever one you want to answer. Did he</p> <p>4 tell you that you were having communications</p> <p>5 problems and he was receiving complaints about</p> <p>6 them?</p> <p>7 A. He said that I could improve my</p> <p>8 communication.</p> <p>9 Q. Okay. Did he give you any specific</p> <p>10 instances in which you could -- in which you were</p> <p>11 having problems with communications or</p> <p>12 complaints?</p> <p>13 A. I wouldn't call them problems. They were</p> <p>14 his interpretation of my communication style, and</p> <p>15 he gave me one or two instances.</p> <p>16 Q. Who's Rob Holtz?</p> <p>17 A. He is a associate director.</p> <p>18 Q. Okay. Did Mr. Witte or Mr. McKnight tell</p> <p>19 you that Mr. Holtz had written to them saying it</p> <p>20 was getting to the point that he could barely</p> <p>21 work with you?</p> <p>22 A. Yes.</p> <p>23 Q. Struggled to want help on any project</p> <p>24 that you were involved in. Did either of them</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. I see. Did he say that she called you</p> <p>2 outright rude?</p> <p>3 A. No.</p> <p>4 Q. Who is Jonathan Marcoux, M-a-r-c-o-u-x?</p> <p>5 A. He is a -- well, I mean -- right now or</p> <p>6 during this e-mail?</p> <p>7 Q. Who was he? Who was Jonathan Marcoux in</p> <p>8 August -- I'm sorry -- during this e-mail?</p> <p>9 A. He was an industrial engineering manager.</p> <p>10 Q. Did you have any interactions with</p> <p>11 Mr. Marcoux in which you remember him complaining</p> <p>12 to Mr. Witte?</p> <p>13 A. I don't remember.</p> <p>14 Q. Okay. Did Mr. Witte ever tell you in</p> <p>15 April of 2019 that Mr. Marcoux had complained</p> <p>16 about a conversation he had with you about</p> <p>17 supporting the west region projects?</p> <p>18 A. No, he didn't.</p> <p>19 Q. Matt never told you that Marcoux had</p> <p>20 complained about his interactions with you?</p> <p>21 A. No.</p> <p>22 Q. Okay.</p> <p>23 MS. KAPPELMAN: I'd like to mark this as</p> <p>24 the next exhibit. Is this 14 or 15? Marcoux.</p>
<p style="text-align: right;">Page 155</p> <p>1 tell you that Mr. Holtz was complaining about</p> <p>2 you?</p> <p>3 A. No, they did not.</p> <p>4 MS. KAPPELMAN: Could we mark this as the</p> <p>5 next exhibit? Is that 12, Emily Miller?</p> <p>6 MS. MILLER: I have it as 13.</p> <p>7 (Exhibit No. 13 marked for</p> <p>8 identification.)</p> <p>9 BY MS. KAPPELMAN:</p> <p>10 Q. Who is Christa Cabriaes?</p> <p>11 A. I have no idea.</p> <p>12 Q. Really? No idea who Christa Cabriaes is</p> <p>13 at all?</p> <p>14 A. No.</p> <p>15 Q. Okay. So did Matt Witte or Kory McKnight</p> <p>16 ever tell you that Christa Cabriaes wrote to</p> <p>17 them saying that she didn't appreciate the manner</p> <p>18 in which you spoke to her? It was really</p> <p>19 unprofessional and unwarranted.</p> <p>20 A. Matt had mentioned that an employee in</p> <p>21 Perris had contacted him and he never gave me her</p> <p>22 name, never told me who it was. He said, "She is</p> <p>23 so dramatic. It's not even worth bringing it up</p> <p>24 to you."</p>	<p style="text-align: right;">Page 157</p> <p>1 Emily Miller?</p> <p>2 MS. MILLER: I have it as 15 if we're</p> <p>3 also introducing the prior e-mail.</p> <p>4 MS. KAPPELMAN: Yes. Christa Cabriaes</p> <p>5 e-mail can be 14 and Marcoux can be 15. Thank</p> <p>6 you.</p> <p>7 MS. MILLER: Exactly. Perfect.</p> <p>8 (Exhibit Nos. 14 and 15 marked for</p> <p>9 identification.)</p> <p>10 BY MS. KAPPELMAN:</p> <p>11 Q. And how about Arron Velarde,</p> <p>12 V-e-l-a-r-d-e? Who is he?</p> <p>13 A. He was the site director for Lathrop,</p> <p>14 California.</p> <p>15 Q. And did Mr. Velarde have issues with you</p> <p>16 that he complained to Matt Witte about?</p> <p>17 A. Not that I was aware.</p> <p>18 Q. Did he tell you that your nudges to</p> <p>19 McDole are petty and that you should go through</p> <p>20 him?</p> <p>21 A. He never said that.</p> <p>22 Q. Let's look at an e-mail from Arron to you</p> <p>23 dated June 11, 2019. Can you see that on your</p> <p>24 screen? Am I sharing it appropriately?</p>

<p style="text-align: right;">Page 158</p> <p>1 A. Yes. Thank you.  2 (Exhibit No. 16 marked for  3 identification.)  4 BY MS. KAPPELMAN:  5 Q. He says in the bottom of his e-mail to  6 you on June 11th:  7 "My opinion it seems petty, and I'm just  8 trying to understand if this came from concerns  9 by Davina or if this is a concern of yours."  10 He would say, "I would ask that we  11 continue to push her into calling Mike or me to  12 help with such disconnects."  13 Did he tell you that your complaint to  14 Mike McDole in the e-mail below seemed petty to  15 him?  16 A. Hold on. I need to read this. Can I see  17 the rest of this chain?  18 Q. Sure.  19 A. Hold on. Like all the way from the  20 bottom. Sorry.  21 Q. You want to start at the bottom?  22 A. Yeah.  23 Q. We can start at the bottom.  24 A. Okay. Thanks. Okay. Can you scroll up?</p>	<p style="text-align: right;">Page 160</p> <p>1 way. I just wanted you to know."  2 So does that make it clear to you that  3 Arron Velarde was complaining about you to  4 Matt Witte?  5 A. That's not how I'm interpreting that.  6 He's complaining about Davina wanting to get  7 added to the slide.  8 Q. Okay.  9 (Exhibit No. 17 marked for  10 identification.)  11 BY MS. KAPPELMAN:  12 Q. Do you recall in June of 2019 Matt Witte  13 asking to have a one-on-one meeting with you?  14 A. I don't recall that, but I see the  15 e-mail.  16 Q. Okay. And when it says under "Accepted:  17 1x1," do you understand that to mean a one-on-one  18 meeting?  19 A. I do.  20 Q. And the agenda for the meeting that Matt  21 sent you is below; is that correct?  22 A. Yeah. I need to read it, though.  23 Q. Feel free. Okay. And did this meeting  24 actually occur between you and your manager,</p>
<p style="text-align: right;">Page 159</p> <p>1 Hold on one second. Okay.  2 What was the question?  3 Q. The question was: Isn't it fair to say  4 that Arron Velarde told you that he thought your  5 e-mail dated June 11, 2019, to Mike McDole was  6 petty?  7 A. That's not how I'm interpreting this.  8 Q. Well, he says "In my opinion it seems  9 petty"; right?  10 (Simultaneous crosstalk.)  11 BY MS. KAPPELMAN:  12 Q. I'm reading his e-mail correctly?  13 A. Yeah, but I'm interpreting it  14 differently.  15 Q. Okay.  16 A. He thought it was petty that Davina  17 wanted her name on the slides.  18 Q. He goes -- do you see where Arron Velarde  19 writes to Matt Witte and says:  20 "I'm only forwarding you this because it  21 relates to the weird tension I continue to see  22 from both sides. If Emily truly wants things  23 like such added for the right intent, then as me  24 and I will ensure we are all driving the same</p>	<p style="text-align: right;">Page 161</p> <p>1 Matt Witte?  2 A. It did.  3 Q. And under "2. Attitude Perception," he  4 says:  5 "I want to give you very honest, open  6 feedback to help you out with communication to  7 keep things tight but positive."  8 Do you see that? Did he actually give  9 you feedback about the perception of your  10 attitude?  11 A. He did, but I don't remember what he  12 said.  13 Q. And did he actually talk to you about how  14 things were going with Mike McDole in June of  15 2019?  16 A. I don't remember.  17 Q. Okay. Well, it says it's an agenda item.  18 Did you use this as an opportunity to tell him  19 about any sexual harassment that had occurred  20 prior to June 11, 2019?  21 A. I did not.  22 Q. Even though he said, "How's it going with  23 McDole," you didn't tell him about the January  24 sexual harassment event or a March sexual</p>

<p style="text-align: right;">Page 162</p> <p>1 harassment, which allegedly had predated this.</p> <p>2 Correct?</p> <p>3 MR. GOODMAN: Objection. Assume facts</p> <p>4 not in evidence.</p> <p>5 BY MS. KAPPELMAN:</p> <p>6 Q. You can answer, ma'am.</p> <p>7 A. Can you say the question again?</p> <p>8 Q. Sure. Even though he asked you how was</p> <p>9 it going with McDole here, you didn't use this as</p> <p>10 an opportunity to tell him about the January</p> <p>11 alleged sexual harassment event or the March</p> <p>12 alleged sexual harassment event; right?</p> <p>13 A. I did not use this opportunity.</p> <p>14 MS. KAPPELMAN: So that was -- was that</p> <p>15 15, Emily Miller?</p> <p>16 MS. MILLER: I have it as 17.</p> <p>17 MS. KAPPELMAN: So this should be 18?</p> <p>18 MS. MILLER: Correct.</p> <p>19 (Exhibit No. 18 marked for</p> <p>20 identification.)</p> <p>21 BY MS. KAPPELMAN:</p> <p>22 Q. Who's Jeff Neuharth, N-e-u-h-a-r-t-h?</p> <p>23 A. He was another industrial engineer.</p> <p>24 Q. And did you have a desktop with</p>	<p style="text-align: right;">Page 164</p> <p>1 that your contention?</p> <p>2 MR. GOODMAN: Objection. Assumes facts</p> <p>3 not in evidence.</p> <p>4 BY MS. KAPPELMAN:</p> <p>5 Q. You tell me. Did Kory McKnight never</p> <p>6 talk to you about this dustup with Jeff Neuharth?</p> <p>7 If the answer is, no, he didn't, he didn't.</p> <p>8 MR. GOODMAN: Objection.</p> <p>9 A. Of the design?</p> <p>10 BY MS. KAPPELMAN:</p> <p>11 Q. I'm asking you if Kory McKnight ever</p> <p>12 counselled you about this issue with</p> <p>13 Jeff Neuharth. Yes or no?</p> <p>14 A. It was a design issue.</p> <p>15 Q. And did Kory McKnight talk to you about</p> <p>16 it?</p> <p>17 A. He might have talked to me about the</p> <p>18 design issue.</p> <p>19 Q. Okay. And he didn't talk to you about</p> <p>20 your communications issues with Mr. Neuharth?</p> <p>21 A. No, he did not.</p> <p>22 (Exhibit No. 19 marked for</p> <p>23 identification.)</p> <p>24</p>
<p style="text-align: right;">Page 163</p> <p>1 Mr. Neuharth about the design of the Erlanger</p> <p>2 platform?</p> <p>3 A. I don't remember.</p> <p>4 Q. Well, does this refresh your recollection</p> <p>5 about it?</p> <p>6 A. Could you scroll to the bottom? Sorry.</p> <p>7 Q. "Emily, just to let you know, I'm angry</p> <p>8 about the design of the Erlanger platform and how</p> <p>9 I was not able to review the design prior to</p> <p>10 install."</p> <p>11 Do you see that?</p> <p>12 A. Yeah. I'm reading it. Sorry.</p> <p>13 Q. Does that refresh your recollection that</p> <p>14 Jeff Neuharth was angry at you because you didn't</p> <p>15 let him review the Erlanger platform?</p> <p>16 A. He was not angry at me. He was angry</p> <p>17 about the design.</p> <p>18 Q. Okay. But you're claiming he wasn't</p> <p>19 angry at you, even though he complained to</p> <p>20 Kory McKnight?</p> <p>21 A. He was angry about the design.</p> <p>22 Q. Right. I'm asking that question. Is it</p> <p>23 your contention that Kory McKnight never talked</p> <p>24 to you about this dustup with Jeff Neuharth? Is</p>	<p style="text-align: right;">Page 165</p> <p>1 BY MS. KAPPELMAN:</p> <p>2 Q. Okay. And who is Melissa Malik?</p> <p>3 A. She is either a director or, like, one</p> <p>4 step above a director.</p> <p>5 Q. Do you remember Kory McKnight speaking to</p> <p>6 you about missing his call with Melissa Malik,</p> <p>7 even though he asked you to join it?</p> <p>8 A. No. I don't remember this.</p> <p>9 MS. KAPPELMAN: And this is what?</p> <p>10 Exhibit 17, Emily?</p> <p>11 MS. MILLER:: I have it as 19.</p> <p>12 MS. KAPPELMAN: 19. Okay.</p> <p>13 BY MS. KAPPELMAN:</p> <p>14 Q. Exhibit 19 is the e-mail with</p> <p>15 Kory McKnight, Matt Witte, cc'ing Melissa Malik.</p> <p>16 So you don't remember missing a call with Melissa</p> <p>17 Malik and getting counselled on it -- about it by</p> <p>18 Kory McKnight in late August of 2019?</p> <p>19 A. I don't remember this.</p> <p>20 (Exhibit No. 20 marked for</p> <p>21 identification.)</p> <p>22 BY MS. KAPPELMAN:</p> <p>23 Q. Okay. Who is Allan Lyall?</p> <p>24 A. He was a, like, executive. Either an SVP</p>

<p style="text-align: right;">Page 170</p> <p>1 A. I have no idea. I have hundreds of --</p> <p>2 not hundreds but I have dozens of these letters.</p> <p>3 Q. And look at the second to last bullet.</p> <p>4 Did you direct Davina not to share information</p> <p>5 with Mike and -- in project planning meetings?</p> <p>6 A. I don't recall.</p> <p>7 Q. So it's possible you did. You just don't</p> <p>8 remember?</p> <p>9 A. I don't recall.</p> <p>10 Q. So would you say you got along well with</p> <p>11 Arron Velarde or not?</p> <p>12 A. That's really subjective.</p> <p>13 Q. No, no. What would you say? I'm asking</p> <p>14 for your subjective opinion about this person.</p> <p>15 Did you believe you got along well with him?</p> <p>16 A. I met him once. He was out on paternity</p> <p>17 leave the entirety of the project. I have no</p> <p>18 opinion on him.</p> <p>19 (Exhibit No. 22 marked for</p> <p>20 identification.)</p> <p>21 BY MS. KAPPELMAN:</p> <p>22 Q. Who is Brian McCormick?</p> <p>23 A. He is a site director in Kentucky.</p> <p>24 Q. Okay. Did you have any communications</p>	<p style="text-align: right;">Page 172</p> <p>1 McCormick?</p> <p>2 A. Not really.</p> <p>3 Q. How about Frances Thunder? Did you</p> <p>4 interact with Frances Thunder ever?</p> <p>5 A. I did.</p> <p>6 Q. Okay. Were there occasions where you</p> <p>7 didn't get back to Frances Thunder and she had to</p> <p>8 send you multiple e-mails and meeting requests?</p> <p>9 A. I'm not sure.</p> <p>10 Q. Okay. Well, here on August 29, 2019,</p> <p>11 Frances Thunder writes to you in an e-mail:</p> <p>12 "I've also sent you multiple e-mails and</p> <p>13 meeting requests over the last couple of months</p> <p>14 that I've not gotten any response to, and I very</p> <p>15 much appreciate the same courtesy."</p> <p>16 Do you see that?</p> <p>17 A. I see that.</p> <p>18 Q. Does that refresh your recollection that</p> <p>19 Frances Thunder was trying to get you to respond</p> <p>20 to e-mails and meeting requests?</p> <p>21 A. I had hundreds of e-mails and hundreds of</p> <p>22 meetings.</p> <p>23 Q. In your complaint -- let's go back to</p> <p>24 that for a minute. In your complaint, in</p>
<p style="text-align: right;">Page 171</p> <p>1 with Mr. McCormick?</p> <p>2 A. Infrequently.</p> <p>3 Q. Okay. Mr. McCormick said that you were</p> <p>4 arrogant, self-righteous, and spoke to him from a</p> <p>5 point of superiority. Is that commensurate --</p> <p>6 does that comport with your recollection of how</p> <p>7 you guys got along? Did you get along with</p> <p>8 Mr. McCormick, I guess is my question.</p> <p>9 A. I didn't work with him enough to have a</p> <p>10 relationship with him.</p> <p>11 Q. Okay. So if he says you were arrogant,</p> <p>12 self-righteous, and approached from a point of</p> <p>13 superiority, you didn't have enough occasion to</p> <p>14 work with him for him to even have that opinion?</p> <p>15 A. I can't talk about his opinion. That's</p> <p>16 his opinion.</p> <p>17 Q. No, I'm not asking about it. Did you</p> <p>18 work with him enough for him to formulate an</p> <p>19 opinion?</p> <p>20 A. I don't know.</p> <p>21 MR. GOODMAN: Objection. Calls for</p> <p>22 speculation.</p> <p>23 BY MS. KAPPELMAN:</p> <p>24 Q. Did you have an opinion about Brian</p>	<p style="text-align: right;">Page 173</p> <p>1 paragraph 15, you say that McKnight told you that</p> <p>2 he had three former male colleagues at Walmart</p> <p>3 who he wanted to recruit at Wayfair. Do you</p> <p>4 recall that? That he had -- he told you he had</p> <p>5 some former colleagues that he wanted to bring</p> <p>6 over from Walmart?</p> <p>7 A. I recall that he told me he had former</p> <p>8 colleagues that he wanted to bring over.</p> <p>9 Q. Well, here's what's interesting. Is that</p> <p>10 a problem? Because you brought over, I think you</p> <p>11 said, five folks from outside of Wayfair to</p> <p>12 Wayfair who you thought were great. So what is</p> <p>13 the problem with Mr. McKnight wanting to recruit</p> <p>14 people from Walmart, or is there a problem?</p> <p>15 MR. GOODMAN: Objection. Argumentative.</p> <p>16 Objection to sidebar.</p> <p>17 BY MS. KAPPELMAN:</p> <p>18 Q. Is there a problem with Mr. McKnight</p> <p>19 trying to recruit people from outside of Wayfair?</p> <p>20 A. No. There's not a problem.</p> <p>21 Q. Okay. Because you yourself recruited, I</p> <p>22 think you said, five people from outside of</p> <p>23 Wayfair; right?</p> <p>24 A. I'd have to check the numbers.</p>

<p style="text-align: right;">Page 174</p> <p>1 Q. Well, it was earlier today so you</p> <p>2 probably wrote them down. And you also recruited</p> <p>3 Mr. McDole; right?</p> <p>4 A. I recruited Mr. McDole.</p> <p>5 Q. Right. So it's -- there's not a problem</p> <p>6 if Mr. McKnight was trying to recruit people he</p> <p>7 knew; right?</p> <p>8 A. There is not a problem.</p> <p>9 Q. Did anybody that McKnight worked with at</p> <p>10 Walmart actually join the team at Wayfair while</p> <p>11 you were there?</p> <p>12 A. Not on industrial engineering.</p> <p>13 Q. Okay. Did you and McKnight get along</p> <p>14 when he was your manager?</p> <p>15 A. No.</p> <p>16 Q. And why would you say you didn't get</p> <p>17 along?</p> <p>18 A. Personality clash.</p> <p>19 Q. Okay. And was Mr. McKnight involved in</p> <p>20 the investigation of your complaints to Mr. Witte</p> <p>21 on August 14th?</p> <p>22 A. Involved in what capacity?</p> <p>23 Q. Any capacity. I mean, as you sit here,</p> <p>24 are you aware of any involvement that</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. So were you in the same building?</p> <p>2 A. Yes.</p> <p>3 Q. So how did you get to McKnight to talk to</p> <p>4 him in person? Did you just walk down the hall?</p> <p>5 A. I can't remember if he drove to Hebron</p> <p>6 where I was or if I drove to Erlanger where he</p> <p>7 was.</p> <p>8 Q. Okay. And what did you say to him and</p> <p>9 what did he say to you when you had your meeting</p> <p>10 to discuss these issues?</p> <p>11 A. I said I was really upset that he was</p> <p>12 again leaving me out of critical conversations.</p> <p>13 He was making it difficult for me to do my job.</p> <p>14 He was excluding me from critical meetings and</p> <p>15 initiatives he wanted to do.</p> <p>16 I asked him to include me in everything.</p> <p>17 He was calling my team directly and cutting me</p> <p>18 out purposefully, and I asked him just to loop me</p> <p>19 in.</p> <p>20 I said, "Obviously, it's your team but</p> <p>21 just please cc me when you make a critical</p> <p>22 decision just so I know what's going on."</p> <p>23 Q. Anything else you said to him in that</p> <p>24 meeting?</p>
<p style="text-align: right;">Page 175</p> <p>1 Mr. McKnight had in the investigation of your</p> <p>2 complaints to Mr. Witte on August 14th?</p> <p>3 A. Witte told me McKnight knew about the</p> <p>4 situation, and that is the extent that I know of</p> <p>5 his involvement.</p> <p>6 Q. I think you and McKnight had a particular</p> <p>7 conflict in September, September 17, 2019. Do</p> <p>8 you happen to remember anything about that?</p> <p>9 A. Yes.</p> <p>10 Q. Tell me everything you remember about</p> <p>11 that before I look at your notes. What did</p> <p>12 Mr. McKnight do that day that upset you?</p> <p>13 A. He was leaving me out of conversations</p> <p>14 that related to my -- critical conversations that</p> <p>15 related to my job, my function, and my team.</p> <p>16 Q. Okay. So how did you talk to him about</p> <p>17 that?</p> <p>18 A. I asked him if we could talk in person.</p> <p>19 Q. And where were you physically located</p> <p>20 when you asked him if you could talk in person?</p> <p>21 A. In Kentucky.</p> <p>22 Q. And where was McKnight physically located</p> <p>23 when you asked if you could talk in person?</p> <p>24 A. In Kentucky.</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Not that I remember.</p> <p>2 Q. Did you ever talk to McKnight about your</p> <p>3 complaint of sexual harassment against McDole,</p> <p>4 either in this meeting or any other meeting?</p> <p>5 A. I believe McKnight might have brought it</p> <p>6 up that he knew and that --</p> <p>7 Q. When was that? When did McKnight tell</p> <p>8 you that he knew about the sexual harassment</p> <p>9 complaint?</p> <p>10 A. Right around the time I met him.</p> <p>11 Q. And was that an in-person meeting in</p> <p>12 which he told you he knew about the sexual</p> <p>13 harassment complaint?</p> <p>14 A. I can't remember. It was, like, one of</p> <p>15 two things. I'm just not remembering.</p> <p>16 Q. Did he say anything else to you during</p> <p>17 this meeting that you don't remember about</p> <p>18 knowing about the sexual harassment complaint?</p> <p>19 A. I'm sorry. Could you say that again?</p> <p>20 Q. Did he saying anything else to you during</p> <p>21 this meeting other than, I know about the sexual</p> <p>22 harassment complaint?</p> <p>23 A. Yeah. He said -- he said that what</p> <p>24 McDole was doing was disgusting and he won't</p>

<p style="text-align: right;">Page 178</p> <p>1 tolerate that.</p> <p>2 Q. And what did you say to that?</p> <p>3 A. I don't remember.</p> <p>4 Q. And did McKnight tell you, as part of the</p> <p>5 conversation that you had in person on</p> <p>6 September 17, 2019, that he was hearing concerns</p> <p>7 about your communication and performance from</p> <p>8 others?</p> <p>9 A. Yes. He told me that.</p> <p>10 Q. Tell me exactly what he said about that</p> <p>11 during that meeting in September 17, 2019, in</p> <p>12 person.</p> <p>13 A. To the best of my recollection he said,</p> <p>14 "I've been getting a lot of complaints about your</p> <p>15 performance. I've been getting complaints about</p> <p>16 your communication."</p> <p>17 And I said, "This conversation we're</p> <p>18 having is about you leaving me out of my</p> <p>19 projects. I'm happy to have a conversation with</p> <p>20 you about my performance at another time."</p> <p>21 Q. And that same day, on September 17th,</p> <p>22 when he was trying to have a performance</p> <p>23 management conference with you, did you file a</p> <p>24 complaint with talent development alleging</p>	<p style="text-align: right;">Page 180</p> <p>1 connected to the McDole complaint? How do you</p> <p>2 connection those two?</p> <p>3 A. I connect those two -- that McKnight had</p> <p>4 told me he knew about my sexual harassment</p> <p>5 complaint, and McKnight considered me a liability</p> <p>6 and a troublemaker, and he didn't want anyone on</p> <p>7 his team that was going to be a troublemaker.</p> <p>8 And McKnight also wanted to hire his</p> <p>9 former co-worker or colleagues, I guess, and he</p> <p>10 told me he needed -- not in this conversation.</p> <p>11 He told me previously he needed my Level 6 spot.</p> <p>12 And so he was trying to get rid of me because of</p> <p>13 my sexual harassment complaint to fill the spot</p> <p>14 he wanted.</p> <p>15 Q. Okay. And you know that how? Like, you</p> <p>16 know the troublemaker part is the one I'm most</p> <p>17 interested in. Did he ever tell you you were a</p> <p>18 troublemaker? Did he use those words?</p> <p>19 A. I don't remember ever -- him calling me a</p> <p>20 troublemaker.</p> <p>21 Q. Okay. And other than telling you he</p> <p>22 thought McDole's actions were -- did you say</p> <p>23 disgusting? What was the word you used?</p> <p>24 A. I can't remember --</p>
<p style="text-align: right;">Page 179</p> <p>1 McKnight was retaliating against you?</p> <p>2 MR. GOODMAN: Objection. Assumes facts</p> <p>3 not in evidence.</p> <p>4 BY MS. KAPPELMAN:</p> <p>5 Q. Let's try it a different way.</p> <p>6 On September 17, 2019, didn't you file a</p> <p>7 complaint with talent development alleging</p> <p>8 retaliation by McKnight?</p> <p>9 A. I did.</p> <p>10 Q. And what was the retaliation for? What</p> <p>11 had you done that he was retaliating against you</p> <p>12 for?</p> <p>13 A. What I felt?</p> <p>14 Q. No. What was he retaliating against you</p> <p>15 for? Like, what was your protected activity that</p> <p>16 he was retaliating against you for?</p> <p>17 A. Filing the sexual harassment complaint.</p> <p>18 Q. Oh, okay. So you think McKnight was</p> <p>19 retaliating against you for your complaint about</p> <p>20 McDole to Wayfair; is that right?</p> <p>21 A. That's part of it.</p> <p>22 Q. So how do you connect those two? How do</p> <p>23 you know -- why do you think that what McKnight</p> <p>24 did in the meeting on September 17th was</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. Okay.</p> <p>2 A. -- the exact word.</p> <p>3 Q. What exactly did you say -- what exactly</p> <p>4 did McKnight tell you after he told you he knew</p> <p>5 about the complaint? He said he thought McDole's</p> <p>6 actions were something. What were they?</p> <p>7 A. He said despicable or disgusting or --</p> <p>8 Q. So he said, "I know about the</p> <p>9 complaint" -- McKnight says that -- "and McDole's</p> <p>10 actions are despicable or disgusting."</p> <p>11 So how do you get from that to you're a</p> <p>12 troublemaker? I'm going to retaliate against</p> <p>13 you. Is there some other step I'm missing?</p> <p>14 MR. GOODMAN: Objection to sidebar.</p> <p>15 BY MS. KAPPELMAN:</p> <p>16 Q. You can answer.</p> <p>17 A. What was the question?</p> <p>18 Q. What am I missing? If all he said to you</p> <p>19 was, "I know about the complaint and I think what</p> <p>20 McDole was doing was disgusting and despicable,"</p> <p>21 but you now tell me you think he said something</p> <p>22 about troublemaker and I'm going to retaliate</p> <p>23 against you.</p> <p>24 And I'm trying to figure out if I'm</p>

<p style="text-align: right;">Page 182</p> <p>1 missing a step because the only thing you told me 2 about, with respect to the McDole complaint, was 3 that McKnight said he thought McDole's conduct 4 was despicable or disgusting. So where do you 5 get he thought you were a troublemaker for 6 bringing the complaint? What do you base that 7 on? 8 A. We had a conversation -- McKnight and I 9 had a conversation on 9/11 -- 10 Q. Yeah? 11 A. -- where McKnight told me he had -- he 12 had a woman like me on his team who was asking 13 him for -- or he said -- what did he say? 14 He said, "I had a woman on my team who 15 is, like, very similar to you. And you know what 16 happened to her? She left the team." 17 And I took that as he was threatening me 18 and he didn't want me on his team. 19 Q. All right. What I'm trying to understand 20 is every conversation you had with McKnight about 21 the McDole sexual harassment claims. And I know 22 you told me he said, "I know about it. I think 23 what McDole did was disgusting and despicable." 24 Were there any other conversations that</p>	<p style="text-align: right;">Page 184</p> <p>1 harassment complaint," or something like that? 2 Because that's a part you left out of your story. 3 Tell me everything McKnight said, please, 4 Ms. Forsythe, in that conversation that led you 5 to believe he was talking about you as a 6 troublemaker. 7 A. He said -- sorry. Can I answer? 8 Q. Yes. 9 A. He said, "I had a woman like you on my 10 team and she complained and you know what 11 happened to her? She left the team." 12 Q. And this conversation happened on 9/11; 13 is that right? 14 A. Yes. 15 Q. With McKnight. 16 A. 9/10 or 9/11. 17 Q. Did you record it in any way? Did you 18 take any contemporaneous notes? Did you write 19 any e-mails to anybody? You know, so that we 20 could see that he made this threat to you? 21 A. I'd have to check if I wrote it down, 22 like, immediately after it happened. 23 Q. Did you tell anybody that McKnight had 24 threatened you for making a complaint on</p>
<p style="text-align: right;">Page 183</p> <p>1 you had with McKnight about the fact that you had 2 brought a complaint of sexual harassment? 3 A. Not that I recall. 4 Q. Okay. So where did you get this 5 opinion -- this idea that he thought you were a 6 troublemaker? Did he ever say you're a 7 troublemaker for bringing a sexual harassment 8 complaint? 9 A. I got that from when he told me that 10 threatening story about kicking a woman off his 11 team for bringing issues up. 12 Q. Okay. So just before you said, I had a 13 woman like you on my team and she left. Is there 14 some more to that story that you're not telling 15 me? What else did he say to you during that that 16 led you to believe that she had made some 17 complaint and that's why she left? 18 (Simultaneous crosstalk.) 19 THE COURT REPORTER: Can you repeat the 20 end of the question? I can only get one at a 21 time. 22 BY MS. KAPPELMAN: 23 Q. Did McKnight actually say, "I had a woman 24 like you on my team. She made a sexual</p>	<p style="text-align: right;">Page 185</p> <p>1 September 11th? 2 A. Anyone at Wayfair? 3 Q. Yeah. 4 A. No one at Wayfair. 5 Q. Okay. Is there anything else upon which 6 you base your theory that McKnight was 7 retaliating against you for bringing the McDole 8 sexual harassment complaint, or have you told me 9 all the evidence you have that supports that 10 retaliation claim? 11 MR. GOODMAN: Objection. Invades the 12 attorney work-product privilege. Argumentative. 13 MS. KAPPELMAN: No, it really doesn't. 14 I'm asking for her evidence in support of her 15 retaliation claim. If I -- 16 (Simultaneous crosstalk.) 17 MS. KAPPELMAN: Let me finish, Bob. 18 If there's any other evidence that she 19 has -- that she has that supports her claim of 20 retaliation that she hasn't already told me. 21 MR. GOODMAN: And I, as her counsel, I 22 get to martial the evidence. So I think my 23 objection is proper but you can go ahead. 24</p>

<p style="text-align: right;">Page 186</p> <p>1 BY MS. KAPPELMAN:</p> <p>2 Q. You told me about one conversation you</p> <p>3 had with McKnight where he said, "I'm aware of</p> <p>4 the sexual harassment complaint. I think what</p> <p>5 McDole did was" -- disgusting or despicable.</p> <p>6 Whatever word he used.</p> <p>7 And then another conversation on</p> <p>8 September 11th where McKnight said, "I had a</p> <p>9 woman like you on the team. She complained. She</p> <p>10 ended up leaving the team." Something like that.</p> <p>11 Are there any other conversations that</p> <p>12 you rely on or evidence that you rely on in</p> <p>13 support of your claim that Mr. McKnight's actions</p> <p>14 were in retaliation for the McDole complaint?</p> <p>15 MR. GOODMAN: Same objection.</p> <p>16 BY MS. KAPPELMAN:</p> <p>17 Q. You can answer, Ms. Forsythe.</p> <p>18 A. I -- just to correct, it was on 9/10, not</p> <p>19 9/11.</p> <p>20 No, there's not.</p> <p>21 Q. Did you ever send your August complaint</p> <p>22 about McDole to Kory McKnight, or did you just</p> <p>23 send it to Witte?</p> <p>24 A. I can't remember. I don't remember</p>	<p style="text-align: right;">Page 188</p> <p>1 to call him. I know there's some friction there</p> <p>2 but wanted to talk to you before I talk to him."</p> <p>3 Q. Do you see that? Is that Kory McKnight</p> <p>4 writing to you and you responding?</p> <p>5 A. I have no idea who's writing that.</p> <p>6 Q. You really don't remember, as you sit</p> <p>7 here today, texting with someone about this</p> <p>8 issue?</p> <p>9 A. I -- you're showing me Emily. I don't</p> <p>10 know who's texting that.</p> <p>11 Q. No, I know, Ms. Forsythe, but how many</p> <p>12 people were you texting with about this -- these</p> <p>13 issues? I'm assuming that this is going to</p> <p>14 refresh your recollection about who you were</p> <p>15 texting with this.</p> <p>16 "I'm at the airport now. Someone pulled</p> <p>17 the fire alarm. Good grief. They haven't</p> <p>18 evacuated yet. I board in 20 minutes. I'll call</p> <p>19 you when I get to O'Hare."</p> <p>20 Is that refreshing your recollection at</p> <p>21 all about this?</p> <p>22 A. Yes, it is.</p> <p>23 Q. Yes, it is?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 187</p> <p>1 sending it to McKnight but I could have. I don't</p> <p>2 remember.</p> <p>3 Q. Do you recall that McKnight actually took</p> <p>4 action on August 15, 2020, to ask McDole not to</p> <p>5 contact you directly anymore?</p> <p>6 A. I don't remember.</p> <p>7 Q. Do you recall that?</p> <p>8 A. I don't remember.</p> <p>9 (Exhibit No. 23 marked for</p> <p>10 identification.)</p> <p>11 BY MS. KAPPELMAN:</p> <p>12 Q. Did you ever text with Mr. McKnight or</p> <p>13 did you text with Mr. McKnight when he was your</p> <p>14 manager?</p> <p>15 A. Yes.</p> <p>16 Q. I'm going to show you a text string</p> <p>17 between you and someone else. I'm going to start</p> <p>18 at the bottom. Actually, I think one starts at</p> <p>19 the top, unlike the e-mail. And it's from you,</p> <p>20 Emily, and it says:</p> <p>21 "Let's try and connect today. I want to</p> <p>22 talk to you about your trip to Perris."</p> <p>23 P-e-r-r-i-s.</p> <p>24 "Mike has reached out to me and wants me</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. So who is it that you were texting with</p> <p>2 here about Mr. McDole?</p> <p>3 A. I'm assuming it's McKnight.</p> <p>4 Q. And why are you assuming that? Just so</p> <p>5 I'm clear.</p> <p>6 A. Because it said O'Hare and he lived in</p> <p>7 Chicago.</p> <p>8 Q. Other than that, it doesn't refresh your</p> <p>9 recollection of having a conversation -- text</p> <p>10 conversation with your manager, Mr. McKnight,</p> <p>11 about Mike McDole; is that right?</p> <p>12 A. Can I read the whole thing?</p> <p>13 Q. Sure. You can read the whole thing, but</p> <p>14 so far we haven't refreshed your recollection</p> <p>15 about the conversation; is that right? Just</p> <p>16 reading what we've read so far.</p> <p>17 A. That's correct.</p> <p>18 Q. So let's go further down.</p> <p>19 A. Wait. Sorry. Can you start at the top?</p> <p>20 Q. Well, we just did read the whole top.</p> <p>21 You want to read the whole top again?</p> <p>22 A. Yes, please.</p> <p>23 Q. Okay. We'll be here as long as you want.</p> <p>24 I really have nowhere to go tonight, so we can</p>



<p style="text-align: right;">Page 190</p> <p>1 read these 10 and 12 times.</p> <p>2 A. And you're assuming I'm the white</p> <p>3 conversation; right?</p> <p>4 Q. See, these are your texts. So you're</p> <p>5 going to read it and tell me. Okay? Because I</p> <p>6 wasn't involved last year with my manager,</p> <p>7 Kory McKnight, in this text string. So I'm</p> <p>8 asking you about it. I'm not assuming -- making</p> <p>9 any assumptions.</p> <p>10 I'm hoping that it refreshes your</p> <p>11 recollection about what happened between you and</p> <p>12 your manager last year because I'm sure he will</p> <p>13 remember. So I'd like to give you a chance to</p> <p>14 talk about your recollection of it.</p> <p>15 A. Okay. Can you scroll down? Okay. Can</p> <p>16 you scroll down? Okay.</p> <p>17 Q. So does this refresh your recollection at</p> <p>18 all about this conversation you had with</p> <p>19 Mr. McKnight or, no, it doesn't?</p> <p>20 A. Yes, it does.</p> <p>21 Q. Okay. So fair to say that you were</p> <p>22 talking to Mr. McKnight about your concerns about</p> <p>23 Mr. McDole; is that right?</p> <p>24 A. In this conversation?</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Do you recall it, as you sit here?</p> <p>2 A. No, I don't remember this.</p> <p>3 Q. Do you remember telling Mr. McKnight,</p> <p>4 "Thanks for talking. This was the first time in</p> <p>5 months that I feel good about a lot of stuff and</p> <p>6 having you here has removed a tremendous amount</p> <p>7 of stress. I really appreciate your support"?</p> <p>8 A. Yes, I remember.</p> <p>9 Q. Do you remember sending that to</p> <p>10 Mr. McKnight?</p> <p>11 A. Yes.</p> <p>12 Q. So at least as of August 15th at</p> <p>13 6:45 p.m. Mr. McKnight was not retaliating</p> <p>14 against you for bringing claims against</p> <p>15 Mr. McDole; right?</p> <p>16 A. I don't know what he was doing in the</p> <p>17 background.</p> <p>18 Q. Well, you're thanking him. You're</p> <p>19 telling him it's the first time in months that</p> <p>20 you feel good about a lot of stuff, and he's</p> <p>21 removed a lot of stress. I'm just reading your</p> <p>22 words. Is it fair to say that you didn't believe</p> <p>23 that Mr. McKnight was retaliating against you on</p> <p>24 August 15th for bringing a complaint against</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. Yes.</p> <p>2 "Mike has reached out to me and wants me</p> <p>3 to call him. I know there's some friction but</p> <p>4 want to talk to you before I talk to him."</p> <p>5 Mike is Mike McDole; right?</p> <p>6 A. I didn't send that blue text.</p> <p>7 Q. I know you didn't send it, Ms. Forsythe,</p> <p>8 but in the context of this conversation you</p> <p>9 understood Mike to mean Mike McDole; right? When</p> <p>10 it said "Talk to you about your trip to Perris,"</p> <p>11 that was Perris, California.</p> <p>12 And this is a conversation with Kory</p> <p>13 McKnight about your relationship with Mike</p> <p>14 McDole. Am I right or am I not right?</p> <p>15 A. Can you repeat the question?</p> <p>16 Q. The question is: Mike is Mike McDole in</p> <p>17 this first bullet; right? This first --</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. And it's you responding when you</p> <p>20 say:</p> <p>21 "Sounds good. What time are you free to</p> <p>22 talk?"</p> <p>23 Do you recall that?</p> <p>24 A. I see that I said that.</p>	<p style="text-align: right;">Page 193</p> <p>1 Mr. McDole?</p> <p>2 A. That's not a fair assumption.</p> <p>3 Q. Okay. So you think -- you did think that</p> <p>4 as of August 15th, when you thanked him and told</p> <p>5 him that you feel good about stuff now and that</p> <p>6 he's removed stress and you appreciate his</p> <p>7 support, that you still thought he was</p> <p>8 retaliating against you for bringing complaints</p> <p>9 about McDole; is that right?</p> <p>10 A. Yes. That's correct.</p> <p>11 Q. That's correct. Good. Okay.</p> <p>12 And when -- he says:</p> <p>13 "I just talked to him. If he needs</p> <p>14 something for you or feels you're not able to</p> <p>15 provide him with the info, I told him to call me.</p> <p>16 I don't want any more drama. I told him we all</p> <p>17 need to work together and that this building is</p> <p>18 Wayfair's building."</p> <p>19 When Kory says, "I talked to him," he</p> <p>20 meant he talked to Mike McDole; right?</p> <p>21 A. You'd have to ask Kory.</p> <p>22 Q. I'm asking you. You participated in this</p> <p>23 conversation and thanked him for what he did. So</p> <p>24 is it fair to say you knew who he was talking</p>

<p style="text-align: right;">Page 194</p> <p>1 about?</p> <p>2 A. I assumed he was talking about McDole.</p> <p>3 Q. So -- and you thanked him -- right -- for</p> <p>4 getting in the middle and stopping the drama.</p> <p>5 A. I said, "Thanks. Have a great rest of</p> <p>6 the night."</p> <p>7 Q. I'm going to ask you the same question</p> <p>8 again. As of August 15th, when you had this</p> <p>9 conversation with Mr. McKnight, you did not</p> <p>10 believe he was retaliating against you for</p> <p>11 complaining about Mike McDole; is that correct?</p> <p>12 A. That is not correct. I believed he was</p> <p>13 scheming --</p> <p>14 (Simultaneous crosstalk.)</p> <p>15 BY MS. KAPPELMAN:</p> <p>16 Q. If that's your answer --</p> <p>17 MR. GOODMAN: Let her finish her answer,</p> <p>18 Counsel.</p> <p>19 BY MS. KAPPELMAN:</p> <p>20 Q. Finish your answer. I like it.</p> <p>21 A. I said no. I believed he was conniving</p> <p>22 and retaliating and incredibly chauvinistic, and</p> <p>23 he was playing both sides.</p> <p>24 Q. Got it. Okay.</p>	<p style="text-align: right;">Page 196</p> <p>1 Matt Witte saying "Do you mind if I start</p> <p>2 looking"; right?</p> <p>3 And that meant looking for other jobs;</p> <p>4 right?</p> <p>5 A. Hold on. I didn't finish it. What was</p> <p>6 the question?</p> <p>7 Q. When you said "Do you mind if I start</p> <p>8 looking," in this e-mail to Matt Witte on</p> <p>9 September 10th, it's looking for other jobs;</p> <p>10 right?</p> <p>11 A. That's correct.</p> <p>12 Q. And do you remember speaking to someone</p> <p>13 and asking for severance pay? That you wanted a</p> <p>14 compelling severance package on September 19th.</p> <p>15 MR. GOODMAN: Objection. Argumentative.</p> <p>16 Assumes facts not in evidence.</p> <p>17 BY MS. KAPPELMAN:</p> <p>18 Q. You can answer. Do you remember asking</p> <p>19 for a compelling severance package when you</p> <p>20 talked to Trevor Shaffer-Figueroa on</p> <p>21 September 19th?</p> <p>22 A. I don't remember my exact words.</p> <p>23 Q. But do you remember talking to Trevor and</p> <p>24 asking him -- telling him you wanted to leave and</p>
<p style="text-align: right;">Page 195</p> <p>1 (Exhibit No. 24 marked for</p> <p>2 identification.)</p> <p>3 BY MS. KAPPELMAN:</p> <p>4 Q. Now, on September 10th, did you ask</p> <p>5 Witte -- Matt Witte if you could start looking</p> <p>6 for another job?</p> <p>7 A. Yes.</p> <p>8 Q. And why were you -- why are you trying to</p> <p>9 look for another job at this point,</p> <p>10 September 10th?</p> <p>11 A. I couldn't handle the stress of McDole.</p> <p>12 Q. So you wanted to look for another job</p> <p>13 within Wayfair or outside of Wayfair?</p> <p>14 A. I said both.</p> <p>15 MR. GOODMAN: Objection.</p> <p>16 BY MS. KAPPELMAN:</p> <p>17 Q. So just fair to say as of September 10th</p> <p>18 you were looking for other jobs both in Wayfair</p> <p>19 and you were also interested in jobs outside of</p> <p>20 Wayfair; right?</p> <p>21 A. That's correct.</p> <p>22 Q. And you told Matt Witte that; right?</p> <p>23 A. Yes.</p> <p>24 Q. And here's an e-mail from you to</p>	<p style="text-align: right;">Page 197</p> <p>1 you wanted Wayfair to give you a severance</p> <p>2 package?</p> <p>3 A. I don't remember my exact --</p> <p>4 MR. GOODMAN: Objection. Assumes facts</p> <p>5 not in evidence.</p> <p>6 BY MS. KAPPELMAN:</p> <p>7 Q. I'm not asking for your exact words,</p> <p>8 Ms. Forsythe. Do you remember talking to Trevor</p> <p>9 Shaffer-Figueroa and telling him you wanted a</p> <p>10 severance package?</p> <p>11 MR. GOODMAN: Same objection. If you're</p> <p>12 not asking her about her exact words, then ask</p> <p>13 her about the subject matter without purporting</p> <p>14 to ask about her words.</p> <p>15 MS. KAPPELMAN: I'd like the question</p> <p>16 read back and I'd like it answered.</p> <p>17 So, Kim, if you could read that question</p> <p>18 back, I'd appreciate it.</p> <p>19 (Whereupon the prior question was read</p> <p>20 back.)</p> <p>21 MR. GOODMAN: Same objections.</p> <p>22 BY MS. KAPPELMAN:</p> <p>23 Q. You can answer, Ms. Forsythe. Do you</p> <p>24 remember asking Trevor Shaffer-Figueroa on</p>

<p style="text-align: right;">Page 198</p> <p>1 September 19, 2019, for a severance package?</p> <p>2 A. I don't remember my exact words.</p> <p>3 Q. I didn't ask for your exact words. Did</p> <p>4 you ask for money so that you could sign a</p> <p>5 release and leave Wayfair? How are those words?</p> <p>6 MR. GOODMAN: Objection. Argumentative.</p> <p>7 Objection. Assumes facts not in evidence.</p> <p>8 Objection. Best evidence.</p> <p>9 BY MS. KAPPELMAN:</p> <p>10 Q. You can answer, Ms. Forsythe. Did you</p> <p>11 ask for money in exchange for a release to leave</p> <p>12 Wayfair?</p> <p>13 A. I don't know how to answer that because I</p> <p>14 don't know what I said.</p> <p>15 Q. Well, here's a good question: In</p> <p>16 September of 2019, which was less than a year</p> <p>17 ago, did you know what the word "severance"</p> <p>18 meant?</p> <p>19 A. That's a complex definition.</p> <p>20 Q. Did you know what it meant? Yes or no?</p> <p>21 And -- did you know what it meant?</p> <p>22 A. In which context?</p> <p>23 Q. In the context in which you used it in</p> <p>24 your phone call. Yes or no? Yes or no? Did you</p>	<p style="text-align: right;">Page 200</p> <p>1 severance package.</p> <p>2 Q. Thank you. And when you said that, did</p> <p>3 you understand what severance package meant?</p> <p>4 A. No.</p> <p>5 Q. Yes or no?</p> <p>6 A. Not in the full context.</p> <p>7 Q. Okay. And is it fair to say that Trevor</p> <p>8 Shaffer-Figueroa presented you with a severance</p> <p>9 package on September 23, 2019?</p> <p>10 A. In -- I would have to look at my e-mails,</p> <p>11 but I think it was something he e-mailed over.</p> <p>12 Q. Okay. Is it fair to say that</p> <p>13 Mr. Shaffer-Figueroa e-mailed you a severance</p> <p>14 package on September 23, 2019?</p> <p>15 A. I know Wayfair terminated me on that day.</p> <p>16 Q. That's not my question. Did Trevor send</p> <p>17 you an actual severance package on September 23,</p> <p>18 2019? That's the question. Yes or no?</p> <p>19 A. I'd have to look.</p> <p>20 Q. Okay. What would refresh your</p> <p>21 recollection?</p> <p>22 A. Looking at the e-mail.</p> <p>23 Q. Are you able to look at your e-mail now?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 199</p> <p>1 know what "severance" meant?</p> <p>2 A. Not --</p> <p>3 Q. Ms. Forsythe --</p> <p>4 A. Not in the correct context. I didn't</p> <p>5 know what it meant.</p> <p>6 Q. We're going to try to play this phone</p> <p>7 call, and let me know if you hear it. If you</p> <p>8 can't hear it, I'll figure it out. Can you hear</p> <p>9 this?</p> <p>10 A. I can.</p> <p>11 (Whereupon a recording was played.)</p> <p>12 (Exhibit No. 25 marked for</p> <p>13 identification.)</p> <p>14 BY MS. KAPPELMAN:</p> <p>15 Q. Were you able to hear all of that</p> <p>16 recording of your phone call with Trevor</p> <p>17 Figueroa?</p> <p>18 A. I was.</p> <p>19 Q. Okay. So you asked Trevor -- let's start</p> <p>20 again with the compelling severance questions.</p> <p>21 Isn't it true that you asked Trevor</p> <p>22 Shaffer-Figueroa for a compelling severance</p> <p>23 package in your call on September 19, 2019?</p> <p>24 A. I asked him to put together a compelling</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. Okay. Let's take a pause so you can look</p> <p>2 at your e-mail and see if Trevor Shaffer-Figueroa</p> <p>3 sent you a severance package on September 23,</p> <p>4 2019.</p> <p>5 THE VIDEOGRAPHER: Do you want to do that</p> <p>6 on or off the record when you say "pause"?</p> <p>7 MS. KAPPELMAN: We can go off the record</p> <p>8 while she looks and then back on the record when</p> <p>9 she has her answer. I'm not sure how long it's</p> <p>10 going to take her but I'll sit here.</p> <p>11 THE VIDEOGRAPHER: The time is 2:18.</p> <p>12 This is the end of Session No. 4, and we are now</p> <p>13 off the record.</p> <p>14 (Recess taken at 2:18 p.m.)</p> <p>15 (Deposition resumed at 2:19 p.m.)</p> <p>16 THE VIDEOGRAPHER: The time is 2:19.</p> <p>17 This is the beginning of Session No. 5, and we</p> <p>18 are now back on the record.</p> <p>19 BY MS. KAPPELMAN:</p> <p>20 Q. Ms. Forsythe, you've had an opportunity</p> <p>21 to look through your e-mails. Is it true that</p> <p>22 Trevor Shaffer-Figueroa presented you with a</p> <p>23 severance package by e-mail after your</p> <p>24 September 19, 2019, phone call?</p>

<p style="text-align: right;">Page 202</p> <p>1 A. No.</p> <p>2 Q. What's the date of the e-mail in which he</p> <p>3 sent you a severance package?</p> <p>4 A. It wasn't a severance package. It was a</p> <p>5 severance agreement.</p> <p>6 Q. Okay. And what's the date that he sent</p> <p>7 you the severance agreement?</p> <p>8 A. It was Monday, September 23, 2019.</p> <p>9 Q. And you actually have the attached</p> <p>10 agreement that he sent you?</p> <p>11 A. It's a separation agreement. Yes, I have</p> <p>12 it.</p> <p>13 Q. And how many months were you going to get</p> <p>14 paid pursuant to that separation agreement?</p> <p>15 A. Hold on. Let me look. How many months?</p> <p>16 Q. Yes.</p> <p>17 A. Two months.</p> <p>18 Q. Going back for a minute to the recording</p> <p>19 we listened to during the course of this</p> <p>20 deposition, you said on there that he should send</p> <p>21 you the compelling severance package and you</p> <p>22 would give it to your lawyer.</p> <p>23 Is it fair to say then that by</p> <p>24 September 19, 2019, you had already retained the</p>	<p style="text-align: right;">Page 204</p> <p>1 proprietary Wayfair documents to that personal</p> <p>2 Gmail account?</p> <p>3 A. I'd have to check.</p> <p>4 Q. Do you recall that after you had --</p> <p>5 strike that.</p> <p>6 Do you recall before that conversation</p> <p>7 with Trevor Shaffer-Figueroa you sent yourself a</p> <p>8 number of proprietary Wayfair documents to your</p> <p>9 personal e-mail account?</p> <p>10 A. After which date?</p> <p>11 Q. Right before you had that call with</p> <p>12 Trevor asking for a compelling severance</p> <p>13 agreement that we just listened to. Do you</p> <p>14 remember sending yourself 54 confidential,</p> <p>15 proprietary Wayfair documents to your personal</p> <p>16 e-mail address?</p> <p>17 MR. GOODMAN: Objection. Argumentative.</p> <p>18 A. Nothing I sent myself was confidential or</p> <p>19 proprietary.</p> <p>20 BY MS. KAPPELMAN:</p> <p>21 Q. But you do remember now that you sent</p> <p>22 yourself 54 documents in five e-mails to your</p> <p>23 personal e-mail account on the 18th of September?</p> <p>24 A. I don't remember the quantity.</p>
<p style="text-align: right;">Page 203</p> <p>1 services of Mr. Goodman?</p> <p>2 A. What time?</p> <p>3 Q. By the time you had this phone call that</p> <p>4 we just listened to, you already had a lawyer;</p> <p>5 right?</p> <p>6 A. No, I didn't.</p> <p>7 Q. So after the phone call you retained a</p> <p>8 lawyer?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay. So when you said, Send me a</p> <p>11 compelling severance package and I'll hand it to</p> <p>12 my lawyer, you didn't actually have a lawyer yet.</p> <p>13 A. Right.</p> <p>14 Q. Is your --</p> <p>15 MR. GOODMAN: I would doubt this letter</p> <p>16 was sent after notice of representation was</p> <p>17 given. I raised the issue under Rule 408 with</p> <p>18 your in-house counsel in Chicago at the time I</p> <p>19 was involved.</p> <p>20 BY MS. KAPPELMAN:</p> <p>21 Q. Ms. Forsythe, are you the e-mail account</p> <p>22 holder of Emily.a.forsythe@gmail.com?</p> <p>23 A. Yes, I am.</p> <p>24 Q. On September 18th did you e-mail</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. And what was the nature of those e-mails?</p> <p>2 Why were you sending 54 documents to your</p> <p>3 personal e-mail address on September 18th?</p> <p>4 A. I don't remember the quantity, but they</p> <p>5 were documents that I had worked on or been a</p> <p>6 part of or created.</p> <p>7 Q. And you knew you were leaving on</p> <p>8 September 18, 2019, so you were sending them to</p> <p>9 yourself on your personal Gmail account; right?</p> <p>10 MR. GOODMAN: Objection. Argumentative.</p> <p>11 Assumes facts not in evidence.</p> <p>12 BY MS. KAPPELMAN:</p> <p>13 Q. You can answer.</p> <p>14 A. That is correct.</p> <p>15 Q. So why did you send yourself, all of a</p> <p>16 sudden, on September 18, 2019, 54 Wayfair</p> <p>17 documents to your personal e-mail account?</p> <p>18 A. After Kory had threatened to fire me on</p> <p>19 the 17th I was worried that he would terminate</p> <p>20 me.</p> <p>21 Q. So you wanted these Wayfair documents on</p> <p>22 your personal e-mail; right? So you could have</p> <p>23 them if you left.</p> <p>24 A. That's not accurate.</p>

<p style="text-align: right;">Page 206</p> <p>1 Q. So what was in these 54 documents that</p> <p>2 you were sending to your personal e-mail address?</p> <p>3 A. I don't know if it was 54 documents.</p> <p>4 (Simultaneous crosstalk.)</p> <p>5 BY MS. KAPPELMAN:</p> <p>6 Q. What did you send yourself?</p> <p>7 A. Documents that I had created or been a</p> <p>8 part of.</p> <p>9 Q. Like what? Give us examples of the</p> <p>10 documents you sent to your Gmail account that</p> <p>11 day, on the 18th of September 2019.</p> <p>12 A. I'd have to check.</p> <p>13 Q. You don't know at all? You can't give us</p> <p>14 a sense of what it was you were e-mailing</p> <p>15 yourself that day?</p> <p>16 A. You said it was 54 documents. That's a</p> <p>17 lot of documents.</p> <p>18 Q. It sure is. Can you remember a single</p> <p>19 one?</p> <p>20 MR. GOODMAN: Objection. Argumentative.</p> <p>21 (Simultaneous crosstalk.)</p> <p>22 BY MS. KAPPELMAN:</p> <p>23 Q. Well, you remembered it was stuff you had</p> <p>24 prepared. So what was it?</p>	<p style="text-align: right;">Page 208</p> <p>1 don't know.</p> <p>2 Q. That's not the question. Are any of the</p> <p>3 documents that you create with project plans and</p> <p>4 budget confidential?</p> <p>5 A. I'm not sure.</p> <p>6 Q. Then how do you know the stuff you sent</p> <p>7 to your Gmail account wasn't confidential?</p> <p>8 A. None of it was marked confidential.</p> <p>9 Q. I see. So that's why you think it wasn't</p> <p>10 confidential because I wasn't marked</p> <p>11 confidential; is that right?</p> <p>12 A. That's correct.</p> <p>13 Q. Did you check with anybody at Wayfair,</p> <p>14 either in legal or HR, to ask them if it was okay</p> <p>15 for you to send those documents to your personal</p> <p>16 Gmail account?</p> <p>17 A. No, I did not.</p> <p>18 Q. Does Wayfair have any policies about the</p> <p>19 information that you can send through servers to</p> <p>20 your personal Gmail accounts?</p> <p>21 A. I'm not sure.</p> <p>22 Q. Do you know whether you were violating</p> <p>23 any Wayfair policies when you sent all those</p> <p>24 documents to your personal Gmail account right</p>
<p style="text-align: right;">Page 207</p> <p>1 A. I'd have to check.</p> <p>2 Q. You don't have any idea what it was that</p> <p>3 you sent yourself on September 18, 2019? No</p> <p>4 clue? I mean, no idea? That's what you would</p> <p>5 say to a jury too; right?</p> <p>6 A. I want to be accurate with what I tell</p> <p>7 you.</p> <p>8 Q. Right. And you have no sense of what it</p> <p>9 was? Whether it was something that was</p> <p>10 confidential, proprietary document to Wayfair,</p> <p>11 letter, e-mails? What were you sending?</p> <p>12 MR. GOODMAN: Argumentative. Asked and</p> <p>13 answered.</p> <p>14 BY MS. KAPPELMAN:</p> <p>15 Q. Go ahead.</p> <p>16 A. I know it wasn't confidential and</p> <p>17 proprietary. They were documents I had created</p> <p>18 and it was a range of documents, and I don't want</p> <p>19 to misrepresent what I sent to myself.</p> <p>20 Q. So you never created confidential</p> <p>21 documents as part of your job at Wayfair?</p> <p>22 Nothing that you ever created at Wayfair would</p> <p>23 have been considered confidential?</p> <p>24 A. I've created hundreds of documents. I</p>	<p style="text-align: right;">Page 209</p> <p>1 before leaving the company?</p> <p>2 MR. GOODMAN: Objection. Argumentative.</p> <p>3 Assumes facts not in evidence.</p> <p>4 BY MS. KAPPELMAN:</p> <p>5 Q. You can answer.</p> <p>6 A. I was not aware.</p> <p>7 Q. Did you check -- before you sent all</p> <p>8 those documents to yourself in your personal</p> <p>9 e-mail account that you had created, did you</p> <p>10 check to see if there was any policy Wayfair had</p> <p>11 prohibiting that?</p> <p>12 A. I checked that everything was not marked</p> <p>13 confidential.</p> <p>14 Q. That wasn't my question. Did you check</p> <p>15 to see that -- whether or not you were violating</p> <p>16 any Wayfair policies by sending those documents</p> <p>17 to your personal account?</p> <p>18 A. No.</p> <p>19 Q. Okay. Do you know whether you could be</p> <p>20 fired for sending documents to your personal</p> <p>21 e-mail account if you were still employed and</p> <p>22 they found out about it?</p> <p>23 A. No. We did that all the time.</p> <p>24 Q. Okay. So there was no policy that said</p>

<p style="text-align: right;">Page 230</p> <p>1 Amazon; right?</p> <p>2 A. Right.</p> <p>3 Q. And they covered your relocation costs,</p> <p>4 but you told me you still had to keep an</p> <p>5 apartment in Cincinnati until March; right?</p> <p>6 A. Right. That's correct.</p> <p>7 Q. Okay. What was your rent in Cincinnati?</p> <p>8 A. It was 15 or \$1,600 a month.</p> <p>9 Q. Okey dokey. I'm just going to show you</p> <p>10 two documents to get you to identify them for the</p> <p>11 record.</p> <p>12 (Exhibit No. 26 marked for</p> <p>13 identification.)</p> <p>14 BY MS. KAPPELMAN:</p> <p>15 Q. By the way -- a few documents. Can you</p> <p>16 see this document, ma'am?</p> <p>17 A. Yes.</p> <p>18 Q. Is this your offer letter from Amazon for</p> <p>19 the new job?</p> <p>20 A. I'd have had to check the date.</p> <p>21 Q. Well, the date is 11/15/2019. It's</p> <p>22 addressed to you with an Amazon letterhead. Are</p> <p>23 you questioning that this is your real offer</p> <p>24 letter?</p>	<p style="text-align: right;">Page 232</p> <p>1 year. I think you get it every month after --</p> <p>2 there's, like, a time period with that. It's not</p> <p>3 a lump sum.</p> <p>4 Q. And then there's a second sign-on payment</p> <p>5 of 33,000 you're entitled to; is that right?</p> <p>6 A. I think that's after -- yeah. A year</p> <p>7 later, but I've not received that.</p> <p>8 Q. Did Wayfair have the same sign-on</p> <p>9 bonuses?</p> <p>10 A. I'd have to check my offer letter.</p> <p>11 Q. Okay. And this is the nature of your</p> <p>12 restricted stock option award that you would get</p> <p>13 at Amazon; is that correct?</p> <p>14 A. That looks correct.</p> <p>15 Q. Okay. Relocation benefits were paid to</p> <p>16 you or expenses earned -- incurred on your behalf</p> <p>17 would be treated as an advance, and are earned on</p> <p>18 a prorated daily basis if you don't leave before</p> <p>19 the first two years; right? You don't have to</p> <p>20 repay it if you stay for two years.</p> <p>21 A. Yes.</p> <p>22 MS. KAPPELMAN: And Emily Miller, which</p> <p>23 number is this document?</p> <p>24 MS. MILLER:: That's 26.</p>
<p style="text-align: right;">Page 231</p> <p>1 A. No.</p> <p>2 Q. Okay. Good.</p> <p>3 So it says here your start date was going</p> <p>4 to be January 6, 2020. Is there some reason why</p> <p>5 you didn't start January 6, 2020?</p> <p>6 A. I had to move down.</p> <p>7 Q. So it was your choice?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So the -- but you got a job that</p> <p>10 would have started January 6, 2020, but you</p> <p>11 decided to postpone that for the move. Is that</p> <p>12 fair to say?</p> <p>13 A. I decided to postpone for the move, and I</p> <p>14 was too emotionally distraught to start a new</p> <p>15 job.</p> <p>16 Q. But Amazon was willing to start paying</p> <p>17 you January 6, 2020, a new salary of \$135,000;</p> <p>18 right?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. And you postponed the start a</p> <p>21 little over a month.</p> <p>22 It said you'd be eligible for a sign-on</p> <p>23 payment of \$40,000. Did you actually get that?</p> <p>24 A. Not yet. You get it after your first</p>	<p style="text-align: right;">Page 233</p> <p>1 MS. KAPPELMAN: Thank you.</p> <p>2 (Exhibit No. 27 marked for</p> <p>3 identification.)</p> <p>4 BY MS. KAPPELMAN:</p> <p>5 Q. Directing to your attention to what's</p> <p>6 going to be marked as 27 for your deposition,</p> <p>7 Ms. Forsythe, did you have occasion to answer</p> <p>8 some questions that Wayfair sent to your lawyer,</p> <p>9 and they're called interrogatories?</p> <p>10 A. Yes.</p> <p>11 Q. And did you review the responses before</p> <p>12 they were submitted --</p> <p>13 A. Yes.</p> <p>14 Q. -- for accuracy?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. You name -- let me just -- bear</p> <p>17 with me for one second. I want to see something.</p> <p>18 One of your witnesses in response to</p> <p>19 Interrogatory No. 6, which asks for each and</p> <p>20 every person with information that supports,</p> <p>21 refutes, or undermines any of the claims, you</p> <p>22 identify Jordan Stone, Mike McDole's sister. Do</p> <p>23 you see that?</p> <p>24 A. I do see that.</p>

<p style="text-align: right;">Page 242</p> <p>1 proprietary system?</p> <p>2 A. I have no idea. I don't even -- I don't</p> <p>3 know what the Storopack pack is. I've never</p> <p>4 worked with anything with Storopack or TACH-IT.</p> <p>5 I have no idea what this is.</p> <p>6 Q. You've never even worked with this stuff</p> <p>7 but you sent it to your home account?</p> <p>8 A. I would have to check. I don't know what</p> <p>9 that is.</p> <p>10 MS. KAPPELMAN: We're going to mark this</p> <p>11 as -- I think this is -- is this 30, Emily</p> <p>12 Miller?</p> <p>13 (Exhibit No. 30 marked for</p> <p>14 identification.)</p> <p>15 BY MS. KAPPELMAN:</p> <p>16 Q. Another e-mail, Emily Forsythe, that you</p> <p>17 sent to yourself on your personal e-mail address.</p> <p>18 Emergency action plan draft, emergency action</p> <p>19 policy, reporting an investigation policy,</p> <p>20 emergency action for Linden, safety manual.</p> <p>21 Why were you sending these things to</p> <p>22 yourself in your personal e-mail address on</p> <p>23 September 18th?</p> <p>24 A. So I can only speak to, like, each line</p>	<p style="text-align: right;">Page 244</p> <p>1 next one as Exhibit 31.</p> <p>2 (Exhibit No. 31 marked for</p> <p>3 identification.)</p> <p>4 BY MS. KAPPELMAN:</p> <p>5 Q. Here's another e-mail that you sent to</p> <p>6 yourself at your personal e-mail address. Do you</p> <p>7 see that?</p> <p>8 A. Yes, I see that.</p> <p>9 Q. This is an -- originally an e-mail that</p> <p>10 Kory McKnight sent to you on August 8, 2019, and</p> <p>11 he says:</p> <p>12 "Here's the examples we talked about</p> <p>13 earlier this week. Please keep confidential."</p> <p>14 Do you see that?</p> <p>15 A. I see that.</p> <p>16 Q. What were they examples of, Ms. Forsythe?</p> <p>17 A. They were confidential documents that</p> <p>18 Kory had sent himself from Walmart.</p> <p>19 Q. Okay. And now you were sending them to</p> <p>20 your own e-mail address on September 18, 2019?</p> <p>21 A. Correct.</p> <p>22 Q. Do you remember you told me that none of</p> <p>23 the documents you sent to your personal address</p> <p>24 were marked confidential, but here Kory McKnight</p>
<p style="text-align: right;">Page 243</p> <p>1 item. I don't want to group the answer to</p> <p>2 everything, but a majority of these I actually</p> <p>3 created myself. They were my documents.</p> <p>4 Q. I actually don't care that they were your</p> <p>5 documents. I actually asked you why were you</p> <p>6 sending to -- them to yourself on your personal</p> <p>7 nonWayfair e-mail on September 18th.</p> <p>8 A. I was sending them because I made them.</p> <p>9 Most of them.</p> <p>10 Q. Did you always send documents to your</p> <p>11 personal e-mail address that you made at Wayfair?</p> <p>12 A. Not always, but I had in the past.</p> <p>13 Q. So why on September 18th are you sending</p> <p>14 all of these documents in one fell swoop to your</p> <p>15 e-mail address?</p> <p>16 A. I felt that Kory was going to retaliate</p> <p>17 and terminate me.</p> <p>18 Q. And, again, did you check with anyone to</p> <p>19 see if these were the kinds of document you were</p> <p>20 allowed to send to your personal e-mail address?</p> <p>21 A. I did not check with anybody with these</p> <p>22 e-mails.</p> <p>23 Q. Okay.</p> <p>24 MS. KAPPELMAN: I'd like to mark this</p>	<p style="text-align: right;">Page 245</p> <p>1 is saying to you "Please keep confidential." And</p> <p>2 yet you sent it to your own personal address on</p> <p>3 that day too; right?</p> <p>4 MR. GOODMAN: Objection. Argumentative.</p> <p>5 (Simultaneous crosstalk.)</p> <p>6 BY MS. KAPPELMAN:</p> <p>7 Q. You can answer, Ms. Forsythe. Is that</p> <p>8 correct?</p> <p>9 A. What was the question specifically?</p> <p>10 Q. The question was: Despite the fact that</p> <p>11 Kory McKnight told you to please keep these</p> <p>12 confidential, you sent them to yourself on your</p> <p>13 personal e-mail address along with a slew of</p> <p>14 other documents on September 18, 2019; isn't it</p> <p>15 that correct?</p> <p>16 A. They are not Wayfair confidential.</p> <p>17 Q. Oh, so when you told me they weren't</p> <p>18 marked confidential, what you meant was they had</p> <p>19 to be marked Wayfair confidential. They could be</p> <p>20 marked confidential, but they had to be marked</p> <p>21 Wayfair confidential for you to decide not to</p> <p>22 send them to yourself. Is that -- am I</p> <p>23 understanding that?</p> <p>24 MR. GOODMAN: Objection. Harassing.</p>

<p style="text-align: right;">Page 246</p> <p>1 Misstates her testimony.  2 BY MS. KAPPELMAN:  3 Q. You can answer. It does say "Please keep  4 confidential," doesn't it?  5 A. It does say "Please keep confidential."  6 Q. Okay.  7 MS. KAPPELMAN: I have no further  8 questions.  9 EXAMINATION  10 BY MR. GOODMAN:  11 Q. Ms. Forsythe, were these Walmart  12 documents, to your knowledge?  13 A. They were Walmart documents. Walmart  14 confidential documents that Kory had taken from  15 Walmart and sent to me, setting a precedent for  16 sending confidential information.  17 Q. Did -- were you aware of anybody in your  18 group being terminated for e-mailing any  19 documents to themselves to work on during their  20 employment with Wayfair, regardless of Wayfair --  21 or however Wayfair may have characterized those  22 documents?  23 A. No, that never happened.  24 Q. There was a question asked about your</p>	<p style="text-align: right;">Page 248</p> <p>1 in Cincinnati beyond the date of your move away  2 from Cincinnati because the landlord had made you  3 pay a penalty that went through the middle or end  4 of March, 2020?  5 A. No. I'm sorry. I kept my furniture  6 there because I was paying rent, and then I moved  7 end of February and then March was the month that  8 I had to pay rent. I, like, lost that month.  9 Q. I understand that, but you could keep  10 furniture there because you were still paying  11 rent for the property through the end of the  12 month of March.  13 A. Yes.  14 Q. There were questions about business  15 trips. The last day that you were at Walmart  16 were you on a business trip or planning to take a  17 business trip?  18 A. I was planning on going to Atlanta the  19 next morning.  20 Q. What was that for?  21 A. It was for a site visit for a project.  22 Q. And did you end up going on that business  23 trip to Atlanta?  24 A. No.</p>
<p style="text-align: right;">Page 247</p> <p>1 rent loss. Did you have to pay your rent in  2 Cincinnati through the end of March 2020 before  3 you could move?  4 A. I terminated my lease early and I had to  5 pay a penalty.  6 Q. Okay. Did it run through the end of  7 March 2020, if you remember?  8 A. That's correct.  9 Q. And your first day of your work in Amazon  10 in February 2020 was what?  11 A. My first day at Amazon was -- the second  12 time was February 10, 2020.  13 Q. For a month and approximately three weeks  14 you were -- you had paid an amount that was  15 considered rent on the Cincinnati apartment  16 without living there.  17 A. I had furniture there but I wasn't there.  18 Q. Okay. The landlord allowed you to keep  19 your furniture there because it had made you pay  20 rent through the end of March. Is that it?  21 A. Correct.  22 Wait. I'm sorry, Bob. Can you repeat  23 that question?  24 Q. Yeah. You were allowed to keep furniture</p>	<p style="text-align: right;">Page 249</p> <p>1 Q. Why not?  2 A. The night before I was supposed to leave  3 Shaffer told me I was terminated.  4 Q. Do you recall whether there was any  5 uncertainty the morning of the proposed business  6 trip?  7 A. No. I -- oh, the morning of? The  8 Tuesday?  9 Q. Yes.  10 A. No, because I had already received the  11 termination letter Monday night. I went to work  12 Monday the 23rd because I --  13 Q. And after you got the termination letter,  14 did you later get a proposed separation agreement  15 from Mr. Shaffer-Figueroa?  16 A. The separation agreement was attached to  17 the letter he sent me -- the e-mail he sent me.  18 Q. All right. I stand corrected.  19 Were there any jobs that you were  20 offered -- who were the jobs that you were -- who  21 offered you jobs that you did not accept in  22 between your termination by Wayfair and your  23 first day at Amazon?  24 A. Give me a second. Okay. So I had a</p>



<p style="text-align: right;">Page 254</p> <p>1 on his team in September?</p> <p>2 A. I think he was just trying to let me know</p> <p>3 that if I complained about stuff or if I asked</p> <p>4 him to include me on stuff or if I made sexual</p> <p>5 harassment claims, he'd eliminate me from his</p> <p>6 team because he had done it before.</p> <p>7 Q. In the conversation in September where he</p> <p>8 gave you that example, had you made any</p> <p>9 complaints beyond the complaints against McDole</p> <p>10 that he told you he knew about in August?</p> <p>11 A. No.</p> <p>12 Q. Do you remember whether you initiated the</p> <p>13 call or he made that? Where he gave you that</p> <p>14 example. Or if he initiated that call?</p> <p>15 A. He called me.</p> <p>16 Q. And was there any purpose to the call, if</p> <p>17 you remember, other than to give you that</p> <p>18 example?</p> <p>19 A. He called me because I had talked to</p> <p>20 Matt Witte earlier that day about some of my</p> <p>21 frustration with Kory, about Kory not including</p> <p>22 me on stuff, and Kory purposely leaving me out</p> <p>23 and being very exclusive. And Kory called me to</p> <p>24 tell me that Matt had called him -- that Witte</p>	<p style="text-align: right;">Page 256</p> <p>1 that he wants to bring on, and then he proceeded</p> <p>2 to ask me how much I made. And I told him I made</p> <p>3 135 at my level.</p> <p>4 And he said, "They're not going to work</p> <p>5 less than 135. I only have your L6 spot left to</p> <p>6 figure this out."</p> <p>7 Basically saying I'm going to replace you</p> <p>8 with a bro of mine, a man he worked with at</p> <p>9 Walmart, and he needed my spot.</p> <p>10 Q. And what was the exact or approximate</p> <p>11 first day that you were supervised by</p> <p>12 Mr. McKnight?</p> <p>13 A. We met -- the first day we met was</p> <p>14 sometime in August and we drove together from</p> <p>15 Atlanta to Savannah. So we had a long time in</p> <p>16 the car to talk.</p> <p>17 Q. Do you recall the interrogatory answers</p> <p>18 about potential witnesses that you were asked</p> <p>19 about about half an hour ago?</p> <p>20 A. I don't remember the names, but I know</p> <p>21 what you're talking about.</p> <p>22 Q. Was there individuals with whom you</p> <p>23 shared your experience of sexual -- physical</p> <p>24 sexual harassment by McDole around the time it</p>
<p style="text-align: right;">Page 255</p> <p>1 had called him, and he just wanted to make sure</p> <p>2 that I knew how to behave on his team.</p> <p>3 Q. Do you understand that sexual harassment</p> <p>4 is just one form of sex discrimination?</p> <p>5 MS. KAPPELMAN: Object to the form of the</p> <p>6 question. Calls for legal conclusion. You can</p> <p>7 answer.</p> <p>8 A. Yes.</p> <p>9 BY MR. GOODMAN:</p> <p>10 Q. We have stated that Mr. McKnight engaged</p> <p>11 in sex discrimination in retaliation, even if he</p> <p>12 did not specially engage in the sexual harassment</p> <p>13 himself. Correct?</p> <p>14 A. Yes.</p> <p>15 Q. There was a question about the</p> <p>16 recruiting -- receiving recruiting effort by</p> <p>17 Mr. McKnight of former employees of Walmart, and</p> <p>18 you said you didn't end up recruiting per se.</p> <p>19 Something about his statements and trying to</p> <p>20 attract Walmart employees to Wayfair that was</p> <p>21 different than recruiting by you and others --</p> <p>22 multiple other employees of Wayfair.</p> <p>23 A. He told me the first day I met him in</p> <p>24 person that he has three guys, men, from Walmart</p>	<p style="text-align: right;">Page 257</p> <p>1 occurred?</p> <p>2 A. Yes, there were.</p> <p>3 Q. And did you list those -- did you give</p> <p>4 those names in your interrogatory answers, if you</p> <p>5 recall?</p> <p>6 A. I did.</p> <p>7 Q. Did Mr. Witte or Mr. McKnight or</p> <p>8 Mr. Shaffer-Figueroa tell you at any time that</p> <p>9 the negative information or negative comments</p> <p>10 about you were being solicited from other Wayfair</p> <p>11 employees?</p> <p>12 A. No.</p> <p>13 Q. Did you have an occasion to give a</p> <p>14 performance -- written performance review of</p> <p>15 Mr. McDole while he was under your supervision?</p> <p>16 A. Yes.</p> <p>17 Q. Approximately when?</p> <p>18 A. I gave him a verbal 30-, 60-, 90-day</p> <p>19 review and I think -- I can't -- I don't think I</p> <p>20 contributed to his annual review.</p> <p>21 Q. So any reviews you gave him for 30, 60,</p> <p>22 90 days was purely verbal?</p> <p>23 A. Verbal, yeah. I think I also did his</p> <p>24 written review. I'd have to check. I don't</p>

<p style="text-align: right;">Page 262</p> <p>1 appropriateness of you moving into another 2 position ever get to the point where you 3 discussed specific positions, whether at your 4 then same level or a level above? 5 A. I had reached out to the real estate team 6 to see if I could talk to them -- start talking 7 to them about moving over there. 8 Q. Who on the real estate team? 9 A. I can't remember. 10 Q. Did they have people at your same level 11 on their team at the time you reached out to 12 them? 13 A. Yes. 14 Q. And when you did that, how long had you 15 been in the senior manager position? 16 A. I'm sorry. When I did what? 17 Q. When you did that, how long had you been 18 in the senior management position? When you 19 reached out to the real estate team and reached 20 out to Mr. Witte about the untenability of the 21 situation on the engineering team? 22 A. I was an associate director at that time, 23 like, when I left Wayfair. I had been in that 24 role a little over a year.</p>	<p style="text-align: right;">Page 264</p> <p>1 BY MS. KAPPELMAN: 2 Q. Okay. Well, let me just ask you this 3 then just in case that is what you said and we 4 read the tape back: Did anyone, including 5 Mr. McKnight, ever make any sexist remarks to you 6 that you're relying on in making a sex 7 discrimination claim against Wayfair? 8 A. Yes. 9 Q. What were those and who made them? 10 A. Kory said he had -- is bringing three men 11 and he needs my spot and then he -- and then he 12 also made that claim that he had a woman on his 13 team who was complaining and he -- she left the 14 team. 15 Q. Anything else? Let me just make sure I 16 get this straight. The sexist remarks that Kory 17 made were, one, he said he was bringing three men 18 in from Walmart and he needed your spot, and he 19 also said there was a woman on his team that had 20 made complaints and she had left. 21 Are there any other sexist complaints 22 upon which you rely in making your sex 23 discrimination complaint against Kory McKnight? 24 MR. GOODMAN: Objection to the extent it</p>
<p style="text-align: right;">Page 263</p> <p>1 Q. Was there any pattern of time in grade 2 for people at that level at Wayfair that you 3 observed when you were there? 4 A. Yeah. A year to a year and a half from 5 the associate director to director promotion. 6 MR. GOODMAN: Pass the witness. 7 MS. KAPPELMAN: I just have a few 8 follow-up questions. 9 FURTHER EXAMINATION 10 BY MS. KAPPELMAN: 11 Q. Ms. Forsythe, in response to your 12 attorney, Mr. Goodman's questioning, you 13 indicated that you had a sex discrimination claim 14 against Kory McKnight that is separate and 15 distinct from the sexual harassment and 16 retaliation claims you have; is that correct? 17 A. I don't think I stated that. 18 Q. You did. He said, he -- you believed 19 that Kory McKnight discriminated against you on 20 the basis of your sex, even if he didn't harass 21 you and you said yes. Do you remember that? 22 MR. GOODMAN: Objection to the extent it 23 misstates the testimony. 24</p>	<p style="text-align: right;">Page 265</p> <p>1 invades the attorney work-product privilege. You 2 can answer. 3 BY MS. KAPPELMAN: 4 Q. You can answer. 5 A. Can I answer that? 6 Q. Yeah. Any other sexist remarks Kory 7 McKnight made? 8 A. Not that I can remember right now. 9 Q. Thank you. Are there any other sexist 10 remarks anyone else at Wayfair made that you're 11 relying on in bringing your sex discrimination 12 claim? 13 A. There was a lot of aggressive sexualized 14 behavior that I saw that would contribute to that 15 feeling. 16 Q. What? If you're relying on it for your 17 sex discrimination case -- in this case, I'd like 18 to hear what that was and by whom and when. 19 A. Sure. So I think the culture on the 20 industrial engineering team in Wayfair in general 21 was just very male dominated, very bro'y, very 22 boys club, very chauvinistic. 23 And a great example: I realized I was in 24 trouble when there was a going-away retirement</p>

<p style="text-align: right;">Page 266</p> <p>1 party for Greg Konicki, who was, like, a VP of  2 distribution. And another man on the team at  3 this retirement party physically hoisted himself  4 on Greg and grabbed him and was, like, holding  5 him aggressively. And then he kissed him in  6 front of everybody and everybody is laughing.  7 And I just remember, like, holy shit.  8 Like, they are not going to take any type of  9 harassment claim seriously because they laugh at  10 harassment. They laugh at sexual harassment.  11 Q. Let me see if I can get this straight. I  12 just want to repeat the story back to make sure  13 I'm not missing anything.  14 You're relying on the fact that there was  15 a going-away party for Greg Konicki and one man  16 grabbed Greg and kissed him and people laughed at  17 it. Did I miss something?  18 A. Yeah. He held him forcibly when he did  19 it. He restrained him.  20 Q. And kissed him. And people laughed?  21 A. And took photos.  22 Q. And what did Greg say? Did Greg say it  23 was unwelcome?  24 A. Yes.</p>	<p style="text-align: right;">Page 268</p> <p>1 BY MS. KAPPELMAN:  2 Q. I'm not talking about sexual harassment.  3 I'm only talking about the sex discrimination,  4 separate and distinct from sexual harassment that  5 your lawyer talked about on cross.  6 So have you told me everything that  7 supports the claim of sex discrimination,  8 separate and distinct from sexual harassment?  9 MR. GOODMAN: Again, objection to the  10 extent it invades the attorney work-product  11 privilege. You can answer.  12 BY MS. KAPPELMAN:  13 Q. You can answer if it supports your claims  14 in this case. Go ahead.  15 A. Not that I remember right now.  16 Q. Are there any male employees that  17 Kory McKnight treated more favorably than you  18 that were in comparable positions?  19 A. Yes.  20 Q. Who was that?  21 A. Arron, the site director of Lathrop was  22 his buddy from when they worked together at  23 Tesla, and Kory would bend over backwards to get  24 Arron what he wanted.</p>
<p style="text-align: right;">Page 267</p> <p>1 Q. Okay. Greg is a male and the other guy  2 was a male; right?  3 A. That's correct.  4 Q. Okay. Anybody else other than the guy  5 kissing Greg in his going-away party -- anybody  6 else do or say anything to you that you rely on  7 in your sex discrimination case against Wayfair,  8 other than the two things you've told me about  9 Kory McKnight?  10 MR. GOODMAN: Objection to the extent it  11 invades the attorney work-product privilege. You  12 can answer.  13 BY MS. KAPPELMAN:  14 Q. If it supports your claim against  15 Wayfair, please do tell me.  16 A. I can't recall anything right now.  17 Q. So have you told me all of the remarks or  18 conduct that support your sex discrimination  19 claim in this case?  20 MR. GOODMAN: Objection. Argumentative.  21 We've also talked about the sexual harassment.  22 That's a second count.  23 MS. KAPPELMAN: I know.  24</p>	<p style="text-align: right;">Page 269</p> <p>1 Q. So how did he treat Arron differently  2 than you in support of your sex discrimination  3 claims?  4 A. So Kory would undermine a direction I  5 took on a project and then go behind my back and  6 change things so that Arron would be happy.  7 Q. Can you give me a -- specific instances  8 in support of your claims in this case?  9 A. Yeah. So there was one situation where  10 we were installing a system in Lathrop and Arron  11 wanted it -- I think one direction or he wanted  12 it longer or shorter or something. He wanted to  13 change the design of the system after we had  14 already placed the order and were starting to do  15 the install. I think it was racking. I can't  16 remember.  17 And I told Arron, "Listen. We can't.  18 It's going to cost hundreds of thousands of  19 dollars to change this."  20 And Kory turns around, has a conversation  21 with Arron, and basically says, like, Don't  22 listen to Emily. I'll take care of you. We'll  23 do what you want. And it's just because they  24 were friends and he was a bro.</p>

<p style="text-align: right;">Page 270</p> <p>1 Q. When you say he's "a bro," is that a 2 sexual harassment term that you're aware of? 3 What does "a bro" mean? 4 A. I don't think that's a sexual harassment 5 term. 6 Q. I'm sorry. I don't know what you mean 7 when you say he's a bro. What does that mean? 8 A. Like a brother in work. A business 9 brother. 10 Q. Is that a Wayfair term of art? I just 11 don't understand what you mean when you say he's 12 a bro. I'm not sure I understand what -- I 13 mean -- what you're saying? 14 A. They have a brotherly affection. 15 Q. So other than this instance where Kory 16 accepted Aaron's suggestion about changing the 17 system in Lathrop, were there any other instances 18 that you can point to where Kory McKnight treated 19 a male employee more favorably than you? 20 A. Not that I can recall. 21 Q. Okay. Thank you. 22 And just a couple of follow-ups. When 23 did Target give you the offer that you turned 24 down, and how much did they offer you?</p>	<p style="text-align: right;">Page 272</p> <p>1 A. I have to check. I don't know. 2 Q. And the Intellimodus job that you turned 3 down, when did they make that offer to you? 4 A. They made that -- I don't remember when 5 they made it. 6 Q. Was it after Target? 7 A. It was after Target. 8 Q. But before you took the Amazon job? 9 A. It was before I took the Amazon job. 10 Q. And do you have any idea how much they 11 were willing to pay you? 12 A. That was around 110 base. 13 Q. And why did you turn that job down? 14 A. It was too small of a company. There was 15 no growth opportunity. 16 Q. And do you know if it was in November or 17 December? Do you have records of when you turned 18 that down and when it was offered? 19 A. I'd have to check my e-mail. 20 MS. KAPPELMAN: So Bob, I'd like to 21 follow up and get information for mitigation 22 purposes about how much -- what the range was 23 that Target was offering her in October and 24 November that she turned down, and how much</p>
<p style="text-align: right;">Page 271</p> <p>1 A. It was a verbal offer, so we never talked 2 money. Let me see. Hold on. 3 Q. Do you know what position it was for, so 4 we can look up the salary? 5 A. I can't remember. Hold on one second. 6 It was a lead project manager position. 7 Q. Okay. And you never talked salary. 8 When did they offer that to you and when 9 did you turn it down? 10 A. End of October, beginning of November. 11 Q. So a month and a half after you lost your 12 job at Wayfair. Why did you turn that job down? 13 A. It would have been a step down for me 14 with responsibility. 15 Q. But you don't know how much they were 16 going to pay you? 17 A. I don't. 18 Q. Did you ever ask? 19 A. I don't remember what -- they gave me a 20 range, and it was more about responsibility and 21 development. 22 Q. I'm not asking about what it was about, 23 but do you know whether the range was around 24 135,000?</p>	<p style="text-align: right;">Page 273</p> <p>1 Intellimodus was offering and when she turned 2 that down. Okay? 3 And that's it. Those are my last 4 questions. 5 FURTHER CROSS-EXAMINATION 6 BY MR. GOODMAN: 7 Q. Where were those jobs, Emily? The two: 8 Target and Intellimodus. 9 A. Target was in Minneapolis, and 10 Intellimodus was in Louisville, Kentucky. 11 MR. GOODMAN: Okay. Nothing further 12 here. 13 MS. KAPPELMAN: Nothing further. 14 THE VIDEOGRAPHER: The time is 3:46. 15 This is the end of Session No. 5, and we are off 16 the record. 17 THE COURT REPORTER: I'd just like to get 18 your orders on the record before we leave. 19 Mr. Goodman, would you like a copy? 20 MR. GOODMAN: Direct it to my office, 21 please. 22 MS. KAPPELMAN: I would like a mini 23 script as well, and if you guys could sync it, 24 Anthony and Kim. Sync the transcript to the</p>